INTERNATIONAL TELECOMMUNICATIONS DEREGULATION ACT OF 1982

HEARINGS
BEFORE THE
SUBCOMMITTEE ON COMMUNICATIONS
OF THE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE
NINETY-SEVENTH CONGRESS
SECOND SESSION
ON
S. 2469

TO AMEND THE COMMUNICATIONS ACT OF 1934 TO PROVIDE FOR IMPROVED INTERNATIONAL TELECOMMUNICATIONS, AND FOR OTHER PURPOSES

JUNE 14, 15, AND 17, 1982

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INTERNATIONAL TELECOMMUNICATIONS DEREGULATION ACT OF 1982

MONDAY, JUNE 14, 1982

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9 a.m., in room 235, Russell Senate Office Building, Hon. Barry Goldwater (chairman of the subcommittee) presiding.

Staff members assigned to these hearings: Riley K. Temple, staff counsel; and Will K. Ris, minority staff counsel.

OPENING STATEMENT BY SENATOR GOLDWATER

Senator GOLDWATER. The hearing will come to order.

I am pleased to welcome you to the first day of hearings on S. 2469, the International Telecommunications Deregulation Act of 1982. In the last Congress, this subcommittee considered several measures designed to rewrite major portions of the Communications Act. The focus of those measures, however, was a policy Congress was developing for domestic telecommunications deregulation.

During last year's consideration of a restatement of policy for the domestic industry, the Senate made it clear that the bill did not address the provisions of international services. I established as a goal to draft, introduce, and pass comprehensive legislation addressing specific international telecommunications policy issues.

This Congress is just beginning to address the competitive viability of U.S. industry in international markets. In fact, conventional wisdom in some circles holds that the international telecommunications arena should be increasingly the focus of our national attention.

S. 2469 makes clear that the Commission's jurisdiction must encompass marketplace competition in the provision of international telecommunications services and establishes as national policy that the U.S. carriers must be afforded an opportunity to compete in foreign markets. These are apparently controversial concepts.

There are those who allege that the United States is foolish to broach the topic of international competition. After all, they say: "We are only one of many major sovereign nations, all participating in these services. International telecommunications facilities are jointly owned among U.S. carriers and foreign entities, and services are jointly provided by our carriers and foreign correspondents, which are principally subsidized by their governments. With such limitations, how can we begin to talk about deregulation and competition in the international arena?" they ask.

Well, first, it is clear that our commitment to reliance on the private sector need not and, indeed, cannot stop at our borders. We must promote competition and entry by new carriers always.

Second, the world is changing. There is substantial evidence not only that foreign correspondents are negotiating with or have entered into arrangements with carriers new to them, like Satellite Business Systems, Western Union, and MCI, but that they themselves are looking to some liberalization of monopoly carrier policies. As such, S. 2469 recognizes that competition is a goal internationally and that the FCC must be given a policy statement by Congress to promote such competition in services.

Competition in providing facilities, that is, cable and satellites, is just not feasible today. But we can see competition among carriers providing a service and among the services themselves.

How does the FCC under the bill promote our procompetition goals internationally? Not easily, and its exercise of such authority promises to be controversial. The FCC is given enormous powers, like to vacate or modify an agreement reached with a foreign correspondent or any other carrier if, among other things, it does not serve our procompetitive interests; or to limit, condition, or bar the entry of foreign carriers.

But the FCC would not exercise these powers in a vacuum. The FCC would operate within the context of an overall international trade policy. This is why the bill's creation of a task force on international telecommunications and information is crucial. The bill creates the group, consisting of the Secretaries of State, Defense, Commerce, and Treasury, the Attorney General, and the U.S. Trade Representative. The FCC Chairman would serve as an ex officio member.

Why is this task force so important? For years my colleagues and I have complained that the United States lacks a focal point for the development of international telecommunications policy. The State Department's perspective can, and in fact often does, differ substantially from that of the Commerce Department or the FCC. In fact, the FCC should not establish U.S. executive branch policy at all, but has done so by default.

For example, there is a major conference to be held in the fall, and only recently has the executive branch appointed a delegation head and the delegation is not yet formed. What kind of a position do we take and what precedents are there for the delegation to follow? Clearly, international telecommunications policy cannot be considered apart from our overall trade policy. Some coordinated U.S. effort is needed, and the bill accomplishes that.

S. 2469 creates a mechanism and a process for seeing that our competitive policies and private sector reliance are not frustrated in foreign markets.

[The bill follows:]

97TH CONGRESS
2D SESSION

S. 2469

To amend the Communications Act of 1934 to provide for improved international telecommunications, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 3 (legislative day, APRIL 13), 1982

Mr. GOLDWATER (for himself, Mr. SCHMITT, and Mr. CANNON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To amend the Communications Act of 1934 to provide for improved international telecommunications, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "International Telecommunications Deregulation Act of 1982".

FINDINGS

SEC. 2. The Congress hereby finds and declares that—

(1) rapid advances in international telecommunications technologies are making possible increased competition among providers of international telecommunications services; and

(2) competition is a more efficient regulator than Government of the provision of diverse international telecommunications services and, as competition continues to develop, deregulation of international telecommunications carriers and services should occur.

TITLE I—GENERAL

PURPOSES—FEDERAL COMMUNICATIONS COMMISSION; INTERNATIONAL TELECOMMUNICATIONS

SEC. 101. The Communications Act of 1934, as amended (47 U.S.C. 151), is amended by inserting immediately after title V the following new title:

"TITLE VI—INTERNATIONAL TELECOMMUNICATIONS

"PURPOSES OF TITLE; FEDERAL COMMUNICATIONS COMMISSION

"SEC. 601. For the purpose of making available, so far as possible, to all the people of the United States, rapid and worldwide telecommunications services with adequate facilities at reasonable charges; for the purpose of encouraging competition in the provision of international telecommunications; for the purpose of promoting United States interests abroad; for the purpose of promoting the free flow of information; for the purpose of promoting a strong telecommunications industry responsive to national defense and security needs; for the purpose of encouraging continuing improvement in the use of technologies; for the purpose of promoting the technological leadership of United States telecommunications equipment and service suppliers; and for the purpose of promoting interstate and foreign commerce in telecommunications services, the Commission shall execute and enforce the provisions of this title.

"APPLICATION OF TITLE

"Sec. 602. The provisions of this title shall apply to, and the Commission shall exercise jurisdiction with respect to, international telecommunications, and all transmission of electromagnetic energy by radio, which originates or is received without the United States, and all persons engaged within the United States in such international telecommunications or such transmission of energy by radio.

"DEFINITIONS

"Sec. 603. For the purposes of this title, unless the context otherwise requires, the term—

"(1) 'affiliate' means any organization or entity which does not provide regulated international telecommunications services (other than a fully separated affiliate) and which is under direct or indirect common ownership or control with another entity, or is owned or controlled by another entity. For the purposes of this paragraph, the terms 'ownership' and 'owned' mean a direct or indirect equity interest (or the equivalent thereof) of more than 50 per centum of an entity;

"(2) 'commission' means the Federal Communications Commission;

"(3) 'construction permit' or 'permit for construction' means that instrument of authorization required by this title or the rules and regulations of the Commission made pursuant to this title for the construction of a station or the installation of apparatus for the transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission;

"(4) 'corporation' includes any corporation, joint-stock company, or association;

"(5) 'dominant carrier' means any telecommunications carrier which is classified as a dominant carrier under section 607(c) of this title. Such term includes—

"(A) any person who owns or controls a dominant carrier to the extent that such entity provides international telecommunications service; and

"(B) any organization and entity (other than a fully separated affiliate) to the extent that such entity provides international telecommunications service;

"(6) 'foreign telecommunications', 'foreign transmission', or 'international telecommunications service' means telecommunications or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and mobile station located outside the United States;

"(7) 'foreign telecommunications carrier', 'foreign information supplier', 'enterprise', 'entity', or 'foreign person' means any telecommunications carrier or enterprise or information supplier or entity of which at least 20 per centum of the capital stock or equivalent ownership is owned or controlled by a foreign person or a domestic person acting in behalf of a foreign person;

"(8) 'information' means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or other symbols;

"(9) 'international telecommunications service' means the offering for hire of international telecommunications facilities, or of telecommunications by means of such facilities;

"(10) 'National Communications System' means a confederation of the telecommunications assets of the agencies and departments of the Federal Government;

"(11) 'person' includes an individual, partnership, association, joint-stock company, trust, corporation, or any Government agency;

"(12) 'equitable market access' or 'equitable terms and conditions' means those rights, terms, and conditions established for United States international telecommunications and information services or facilities in foreign markets that are reasonably equivalent to those established for foreign telecommunications and information services or facilities in United States markets. The term 'equitable access' includes rights of access to and establishment in foreign markets;

"(13) 'regulated telecommunications service' or 'regulated service' means any international telecommunications service designated by the Commission pursuant to this Act and which the Commission determines shall be regulated pursuant to this Act, and any international telecommunications service or facilities not subject to effective competition as determined by the Commission pursuant to sections 607(c) and 624(b) of this title;

"(14) 'resale' means the reoffering, with or without adding value, by any person for a profit of any international telecommunications service which has been obtained from a carrier;

"(15) 'sharing' or 'shared use' means the collective use of telecommunications services or facilities with each user paying the telecommunications-related costs associated with subscription to and collective use of the telecommunications services or facilities according to its pro rata usage of such services or facilities;

"(16) 'state' means the several States of the United States and includes the District of Columbia and the territories and possessions of the United States;

"(17) 'tariff' means a schedule governing any generally applicable charge, characteristic, regulation, or practice associated with a regulated international telecommunications service;

"(18) 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information, by means of electromagnetic transmission, with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission;

"(19) 'international telecommunications carrier' or 'carrier' means any person, including any government or independent government entity, which offers any international telecommunications service or facilities used by any person to provide telecommunications services. A person engaged in any nontelecommunications activities, in providing any information service or information software, in producing or marketing equipment, or a person engaged in broadcasting, or in providing any cable service, shall not, insofar as such person is so engaged, be deemed a carrier. The shared use of telecommunications equipment, facilities or services among Government agencies, or the provision of telecommunications equipment facilities or services by any Government agency to any other Government agency, shall not be sufficient to deem such Government agencies to be a carrier;

"(20) 'transmission of energy by radio', 'radio transmission of energy', or 'transmission of electromagnetic energy by radio' means the transmission of electromagnetic energy through space without benefit of a closed transmission medium and includes both such transmission and all instrumentalities, facilities, and services incidental to such transmission;

"(21) 'transmission facilities' or 'telecommunications facilities' means equipment (including wire, cable, microwave, satellite, and fiber optics) which transmit information by electromagnetic means or which directly support such transmission, but does not include customer-premises equipment; and

"(22) 'United States' means the several States and territories, the District of Columbia, and the possessions of the United States.

"FINDINGS/TRANSITION PLAN

"SEC. 604. (a) The Congress hereby finds and declares that—

"(1) the basic goals of this Act continue to be valid, and it is in the public interest to continue efforts to attain these goals;

"(2) a technologically advanced and internationally competitive United States international telecommunications industry is vital to the economic welfare and national security and defense of the United States;

"(3) international telecommunications services which are not subject to effective competition may continue to be regulated by the Commission;

"(4) current and projected public, business, and governmental needs for additional international telecommunications and information services and equipment are highly diverse;

"(5) advances in technology can make possible new and diverse international telecommunications services and equipment previously unavailable to the public and can satisfy specialized consumer needs;

"(6) modern efficient telecommunications services are essential to interstate and foreign commerce;

"(7) decisions of the courts and the Commission have indicated a clear need for congressional guidance;

"(8) increased competition in the supply of telecommunications and information services and equipment and selective deregulation have already produced significant benefits for the telecommunications and information consumer; and

"(9) further competition and deregulation can result in increased benefits to the consumer and additional opportunity to exploit new technologies and should be explicitly encouraged through appropriate statutory policies and guidelines.

"(b) The Commission shall establish a plan to carry out the provisions of this title to foster marketplace competition and to implement deregulation no later than the dates specified therein (or where no date is specified at the earliest practicable date).

"STATEMENT OF POLICY

"SEC. 605. (a) It is the policy of the United States to rely wherever and whenever possible on marketplace competition and on the private sector to provide international telecommunications services, and thereby to reduce and eliminate unnecessary regulation including the regulation of telecommunications facilities used for the provision of international services. Marketplace competition will result in technological innovation, operating efficiencies, and availability of a wide variety of telecommunications technologies that are now or may become available in the future, and will promote the equitable and efficient use of such technologies to provide international telecommunications services. Where effective competition does not now exist, it is the policy of the United States to encourage the development of such competition, and pursuant to an appropriate transition in accordance with this title, to deregulate international telecommunications services while establishing appropriate safeguards to prevent anticompetitive practices, or adverse impact upon the national defense and security or emergency preparedness. Whenever the Commission finds it necessary to regulate international telecommunications services or facilities which are not subject to effective competition, such regulation shall be minimal. Unless the Commission in any particular case shall find otherwise, it shall be presumed that there are no basic technological, operational, or economic factors which would necessarily preclude the provision of any international telecommunications service under conditions of competition. Competition in the provision of telecommunications from foreign persons and their United States affiliates is welcome to the extent that United States persons are permitted equitable access to and the right of establishment in the home markets of those foreign persons who seek access to the United States market.

"(b) The Congress recognizes that the provision of international telecommunications services, and the planning, construction, and ownership of international telecommunications facilities, are necessarily joint undertakings between United States persons and representatives of numerous sovereign nations. Accordingly, the interests of those sovereign nations are to be considered in the implementation of United States policy.

"AUTHORITY OF THE COMMISSION

"SEC. 606. (a) The Commission shall exercise only so much of the powers conferred upon it under this title as is essential to the purposes of this title, and shall revise, reduce, or eliminate any rule or regulation prescribed pursuant to this title with respect to any international telecommunications service or any carrier operating in any market or geographic area as competition develops unless such revision, reduction, or elimination thereof may result in a significant adverse impact upon the national defense and security or emergency preparedness or upon the economic competitiveness and viability of United States suppliers of telecommunications equipment and telecommunications services relative to competing foreign suppliers and their United States affiliates.

"(b) The Commission shall have continuing authority over the provision of regulated international telecommunications services.

"(c) In addition to any other authority which the Commission may exercise under this title, the Commission shall have authority over any dominant carrier and its affiliates (other than any fully separated affiliate) for the purpose of—

"(1) dealing with anticompetitive practices between any fully separated affiliate and the dominant carrier or its affiliates; and

"(2) protecting users of international telecommunications services in connection with dealings between any dominant carrier and its affiliates and any fully separated affiliate.

"(d) Nothing in this title is intended to preclude management personnel of a dominant carrier from directing the operations of any dominant carrier, any affiliates, and any fully separated affiliates, except that costs of such direction shall be properly allocated to any dominant carrier, any affiliates, and any fully separated affiliate.

"(e) Consistent with the purposes of this title, the Commission shall not prevent or limit the use of any technology or improvement in the provision of international telecommunications services.

"(f) The Secretary of Commerce is authorized to collect information on the competitiveness of United States suppliers of telecommunications equipment and services, foreign direct investment in the domestic telecommunications industry, foreign laws and administrative controls on access of United States persons to foreign markets, the degree of equitable access to foreign markets by United States persons, the United States share of global markets, and such other information as the Secretary deems necessary, and shall report any findings to the Congress on a periodic basis.

"CLASSIFICATION OF CARRIERS AND SERVICES

"Sec. 607. (a) Not later than thirty days after the date of enactment of this title, the Commission shall identify, and cause to be published in the Federal Register, a list of those services which are fully subject to regulation by the Commission on the date of enactment of this title.

"(b)(1) The Commission may classify or reclassify as a regulated international telecommunications service any services or facilities where it determines after a hearing that—

"(A) such services or facilities are not subject to effective competition;

"(B) Federal regulation of such services is required to accomplish the purposes of this title; and

"(C) the benefits of such regulation outweigh the costs.

"(2) In making such a determination under paragraph (1) the Commission shall consider—

"(A) the number and size of unaffiliated providers of service or facilities;

"(B) the extent to which service or facilities are available from unaffiliated providers in the relevant geographic area or market;

"(C) the ability of such unaffiliated providers to make such service or facilities readily available at comparable rates, terms, and conditions;

"(D) whether the service or facilities are necessary to the Nation during a state of public peril or disaster or other national emergency;

"(E) the extent to which United States carriers are accorded fair access to or interconnection in foreign markets in the provision of services or facilities; and

"(F) other indicators of the extent of competition.

"(c) The Commission shall, upon its own motion or upon petition, classify or reclassify as a dominant carrier any carrier which is dominant in the provision of regulated international telecommunications services in a substantial percentage of the total number of markets or submarkets for international telecommunications services or and may classify as dominant any foreign telecommunications carrier, or carrier which is owned or controlled by a foreign government.

"(d) The Commission may, upon its own motion or upon petition, reclassify any dominant carrier as an unregulated carrier.

"TRANSITIONAL PROVISIONS OF CERTAIN FACILITIES AND SERVICES

"SEC. 607A. (a) Each international telecommunications service which is being provided on the date of the enactment of this title shall continue to be provided under tariff, on an unbundled basis, for a period of not less than one year from such date.

"(b) Not later than one year after the date of enactment of this title, the Commission shall determine, after an expedited hearing in which any interested party may join, which of the international telecommunications services described in subsection (a) must continue to be regulated pursuant to subsection 607(b)(1).

"(c)(1) Any international telecommunications service for which the Commission fails to make the determination specified in section 607(b) shall be deregulated.

"(2) Upon its own motion, or upon petition, the Commission shall review at least once every two years any determination that any international telecommunications service is to be regulated pursuant to section 607(b). Upon making a determination that a service is subject to effective competition, the Commission shall deregulate such service.

"RESALE OF TELECOMMUNICATIONS SERVICES

"SEC. 608. (a) Except as otherwise provided in this title, the Commission shall not regulate or prohibit the resale or shared use of any international telecommunications service except that the Commission may regulate or restrict the resale of any regulated telecommunications service by a foreign entity to the extent that such resale services offered by United States telecommunications persons are regulated or restricted in the home country of such entity and such regulation or restriction does not provide equitable opportunities for United States persons to participate in the resale market.

"(b) No carrier may establish or enforce any restrictions on the resale or other use of any regulated service provided by such carrier.

"PRESCRIPTION OF CARRIER REQUIREMENTS

"SEC. 609. (a) Consistent with the purposes of this title and the policy of this title, the Commission may—

"(1) prescribe different requirements for different carriers, or

"(2) exempt any person in whole or in part, from the requirements of this title,

if it finds that such different requirement or exemption is consistent with the purposes of this title.

"(b) The Commission shall not have the authority, with respect to carriers (including any fully separated affiliate of a dominant carrier), to impose any requirements which are not specifically provided in this title.

"(c) Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of this title shall forfeit to the United States an amount assessed by the Commission in accordance with the procedure established in paragraph (2) and paragraph (3)(A) of section 503(b), which shall not exceed $25,000 for each offense. Every distinct violation shall be a separate offense, and in the case of a continuing violation each day shall be deemed a separate offense.

"INTERCONNECTION

"SEC. 610. (a) In addition to that interconnection required under section 622(a), every telecommunications carrier—

"(1) shall, if a reasonable request is made, establish interconnection of its regulated service—

"(A) with any telecommunications carrier;

"(B) with any telecommunications facility or private telecommunications system; and

"(C) with any customer premise equipment which is owned or leased by a customer of such carrier and which meets such standards as the Commission may establish under this Act;

"(2) may not discriminate in an unreasonable or anticompetitive manner with respect to the charges, terms, and conditions for interconnection of its regulated service; and

"(3) such charges, terms or conditions for interconnection shall be based upon the costs of the regulated service or facilities.

"(b) The Commission shall have authority—

"(1) to specify or to approve the manner, rates, terms, and conditions for the provision by any carrier of regulated international telecommunications services or facilities to other carriers or customers of such carrier;

"(2) to specify or to approve the manner, rates, terms, and conditions of interconnection between the regulated international telecommunications services and facilities of a carrier and—

"(A) any international telecommunications facility or any private international telecommunications system which meets such uniform, minimum, and technical standards as the Commission may establish by rule; and

"(B) any customer-premises equipment which is owned or leased by a customer of such carrier and which meets such standards as the Commission may establish; and

"(3) to prohibit discrimination by carriers in the provision of regulated international telecommunications services.

"(c) Any person who violates any provision of this section or any rule or order promulgated thereunder shall be liable to the United States for an amount not to exceed $250,000.

"PROVISION OF REGULATED SERVICES BY TELECOMMUNICATIONS CARRIERS

"SEC. 611. (a) It shall be the duty of every carrier providing regulated international telecommunications service to furnish such service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

"(b) Telecommunications carriers engaged in providing regulated international telecommunications service shall establish just, reasonable, and nondiscriminatory tariffs for and in connection with such service, and any such tariff that is unjust or unreasonable, or that results in any unjust or unreasonable discrimination, preference, or advantage with respect to any person (including any fully separated affiliate), class of persons, or locality for or in connection with like international telecommunications services is hereby declared to be unlawful.

"INFORMATION ON TELECOMMUNICATIONS CHARGES AND PRACTICES

"SEC. 612. (a) Within such reasonable time as the Commission shall prescribe, every carrier shall file with the Commission, publish, and make available for public inspection tariffs for regulated international telecommunications services and showing the practices and regulations affecting such charges. Such tariffs shall contain such other information, and be kept open for public inspection in such places, as the Commission may by regulation require. Each such schedule shall give notice of its effective date, and each such carrier shall furnish such tariffs to each of its interconnecting carriers.

"(b)(1) Unless otherwise provided by or under authority of this Act, no carrier shall engage or participate in regulated international telecommunications services unless tariffs have been filed and published in accordance with the provisions of this title and with the regulations made thereunder.

"(2) No carrier shall—

"(A) charge, demand, collect, or receive a greater, lesser, or different compensation for any regulated international telecommunications service or for any service in connection therewith than the charges specified in the tariff then in effect;

"(B) refund or remit by any means or device any portion of the charges so specified; or

"(C) extend to any person any privileges or facilities, or employ or enforce any regulations or practices affecting such charges, except as specified in such tariff.

"TARIFFS

"SEC. 613. (a) Each carrier providing a regulated international telecommunications service shall file a new or revised tariff for such service pursuant to this section.

"(b) Subject to the provisions of subsection (c) of this section, tariffs filed pursuant to this section, including a revised tariff, shall take effect on the effective date specified in such filing, unless the Commission for good cause shall specify, by rule or order in any particular case, a longer period not to exceed thirty days.

"(c) The Commission shall give public notice of the filing of such new or revised tariff within fifteen days of such filing. Any party in interest may file with the Commission, within such reasonable time as the Commission shall specify, but in no event later than thirty days from the date of such notice, a petition for hearing concerning the lawfulness of such tariff, which petition shall set forth specific allegations of fact sufficient to show that the petitioner is a party in interest and that the tariff constitutes a prima facie violation of the provisions of this title. The petitioner shall serve a copy of such petition upon such carrier, which carrier shall have the opportunity to reply within a reasonable period of time as specified by the Commission. Not later than thirty days from the time for filing such reply, the Commission, on the basis of the tariff and pleadings filed or on the basis of other information within the knowledge of the Commission, shall either grant or deny such petition. Whenever the Commission shall grant such a petition it shall hold a hearing concerning those issues raised in the petition which the Commission determines are substantial and material questions relating to such violation. Upon completion of such hearing, the Commission shall either accept, accept with conditions, or reject such tariff, and shall make findings of fact and conclusions of law with respect to the allegations set forth in the petition.

"COPIES OF CONTRACTS TO BE FILED

"SEC. 614. (a) All contracts, agreements, or arrangements related to any regulated international telecommunications service shall be filed with the Commission.

"(b) The Commission shall have authority to require the filing of any other contracts, agreements, or arrangements of any carrier providing a regulated international telecommunications service and shall have authority to exempt any such carrier from submitting copies of contracts, agreements, or arrangements as the Commission may determine.

"(c) The Commission shall have authority to vacate or modify any contract, agreement, or arrangement related to any regulated international telecommunications service filed with the Commission under this section, if the Commission determines that such contract, agreement, or arrangement is not consistent with the purposes of this title, or such contract, agreement, or arrangement unjustly or unreasonably discriminates against any carrier.

"VALUATION OF CARRIER PROPERTY

"SEC. 615. (a) After opportunity for hearing, the Commission, where necessary for the proper administration of this title, may make an evaluation, as of such date as the Commission may designate, of all or of any part of the property owned or used by any carrier for the provision of any regulated international telecommunications service.

"(b) The Commission may at any time require any such carrier to file with the Commission an inventory of all or of any part of the property owned or used by said carrier, which inventory shall show the units of said property classified in such detail, and in such manner, as the Commission shall direct, and shall show the estimated cost of reproduction new of said units, and their reproduction cost new less depreciation, as of such date as the Commission may direct; and such carrier shall file such inventory within such reasonable time as the Commission by order shall require.

"(c) The Commission may at any time require any carrier offering a regulated international telecommunications service under this Act to file with the Commission a statement showing the original cost at the time of dedication to telecommunication use of all or of any part of the property owned or used by such carrier. For the showing of such original cost said property shall be classified, and the original cost shall be defined, in such manner as the Commission may prescribe; and if any part of such cost cannot be determined from accounting or other records, the portion of the property for which such cost cannot be determined shall be reported to the Commission; and, if the Commission shall so direct, the original cost thereof shall be estimated in such manner as the Commission may prescribe. If the carrier owning the property at the time such original cost is reported shall have paid more or less than the original cost to acquire the same, the amount of such cost of acquisition, and any facts which the Commission may require in connection therewith, shall be reported with such original cost. The report made by a carrier under this subsection shall show the source or sources from which the original cost reported was obtained, and such other information as to the manner in which the report was prepared, as the Commission shall require.

"(d) The Commission shall keep itself informed of all new construction, extensions, improvements, retirements, or other changes in the condition, quantity, use, and classification of the property of carriers used in the provision of regulated international telecommunications services, and of the cost of all additions and betterments thereto and of all changes in the investment therein, and may keep itself informed of current changes in costs and values of carrier properties.

"(e) For the purpose of enabling the Commission to make a valuation of any of the property of any such carrier, or to find the original cost of such property, or to find any other facts concerning the same which are required for use by the Commission, it shall be the duty of each such carrier to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memorandums whenever and wherever requested by any such duly authorized agent, and to cooperate with and aid the Commission in the work of making any such valuation or finding in such manner and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering this section shall have the full force and effect of law. Unless otherwise ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public. The

Commission, in making any such valuation, shall be free to adopt any method of valuation which shall be lawful.

"NOTICE AND APPROVAL OF FACILITIES CONSTRUCTION, ACQUISITION, OR OPERATION

"SEC. 616. (a) Subject to subsection (b), upon notification to the Commission, any person may—

"(1) undertake the construction of any new international transmission facilities or of any extension thereof;

"(2) acquire or operate any such facility or extension thereof; or

"(3) engage in international telecommunications over or by means of such new facility or extension.

"(b)(1) The Commission may, by rule or order, require a dominant carrier to obtain from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, extension, acquisition, operation, or use of any new or extended international telecommunications transmission facility, other than switching facilities.

"(2) Nothing in this section shall be construed to permit the Commission to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.

"(3) The Commission may, upon application, authorize in whole or in part a long-term facilities construction plan for a dominant carrier. Upon authorization of such plan such carrier may not be required to obtain separate certification under paragraph (1) of this subsection for each element of such plan. The Commission may condition any authorization upon appropriate safeguards and submission to the Commission of periodic reports in such form and containing such information as the Commission may require in order to monitor the implementation and operation of such plan.

"(4) The Commission may by rule or order require that a carrier providing a regulated international telecommunications service may not discontinue, reduce, or impair regulated international telecommunications service to a community or part of a community unless it obtains from the Commission a certificate that the present or future public convenience will be served by the discontinuance, reduction, or impairment of regulated international telecommunications services.

"(c) Upon receipt of any notification or application under the provisions of subsections (a) and (b), the Commission shall cause notice thereof to be given to the Secretary of Defense, the Secretary of State (with respect to notifications or applications involving service to foreign points), and the Secretary of Commerce.

"(d) The Commission shall have the power to issue a certificate for the facilities or plan for which application was made; to refuse to issue a certificate; to issue a certificate for a portion or portions of a facility or plan, or extension thereof, or discontinuance, reduction, or impairment of service, described in the application. The Commission may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. After issuance of such certificate a carrier may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, extension, acquisition, operation, or discontinuance, reduction, or impairment of service authorized thereby. Any construction, extension, acquisition, operation, discontinuance, reduction, or impairment of service contrary to the provisions of this section may be enjoined by any court of competent jurisdiction.

"(e) The Commission may, upon appropriate request, authorize temporary or emergency augmentation of facilities or services or discontinuance, reduction, or impairment of facilities or services without regard to the provisions of this section.

"(f)(1) Any dominant carrier, and any other carrier, if the Commission shall so order, shall maintain and file with the Commission a description of the operational protocols and technical interface requirements for connection with or use of any regulated international telecommunications services, and report regularly to the Commission—

"(A) any material change relating to such protocols, or interface requirements which has been adopted or implemented, or which is required by the specific design or development of any service, facility, or equipment including any information or technical requirements relating to the capacity of services, facilities, or equipment to function effectively and efficiently if connected to any regulated international telecommunications service or facility furnished by a dominant carrier;

"(B) summaries of construction programs or activities intended to maintain, extend, or expand the regulated international telecommunications services or facilities if such information affects the interconnection of service offerings of competing carriers or persons seeking interconnection with such services or facilities of such carrier; and

"(C) such additional information relating to any regulated international telecommunications services, the disclosure of which the Commission determines to be necessary on its own initiative or in response to a petition submitted by any interested person.

"(2) In any case in which a submission to the Commission is required under paragraph (1), any person may obtain the information which is the subject of such submission upon reasonable request and payment of reasonable copying and processing fees, unless the Commission after consultation with the Secretary of State, the Secretary of Defense, and the Secretary of Commerce, determines that the furnishing of such information would be detrimental to the national defense and security or to the emergency preparedness of the Nation or the technological or economic competitiveness of the United States telecommunications industry or is otherwise inconsistent with this title. In the case where one or more of the Secretaries cited above object to the public release of such information, the Commission may not make such material available without the approval of the President. In any case where the public release of such information is withheld (whether because of a determination of the Commission or because the Commission has not received the approval of the President), each Secretary cited above who has advised against or objected to the release of such information shall provide the appropriate committees of the Congress with the reasons for the advice or objection not later than ten days after the advice has been given to the Commission or the objection has been filed with the Commission.

"(3) The Commission shall prescribe procedures to implement this subsection not later than one hundred and eighty days after the date of enactment of this title.

"(g) Any carrier which refuses or neglects to comply with any order of the Commission made in pursuance of subsection (e) (relating to the extension of facilities) shall forfeit the United States an amount assessed by the Commission in accordance with the procedure established in paragraph (2) and paragraph (3)(A) of section 503(b), which shall not exceed $2,500 for each day during which such refusal or neglect continues.

"INTERNATIONAL TELECOMMUNICATIONS FACILITIES

"SEC. 617. (a)(1) The Commission may prescribe appropriate procedures to assess United States carriers' proposals for the construction and utilization of international telecommunications facilities.

"(2) In assessing United States carriers' proposals, the Commission shall in consultation with affected United States carriers, including persons seeking to participate in ownership and operation of international telecommunications facilities, and appropriate Federal agencies develop guidelines to aid the planning process consistent with the purposes of this title.

"(b) At any time during the development of such guidelines or during the planning process, the Commission or any Commissioners may meet to exchange information with representatives of foreign telecommunications entities responsible for facilities planning in their home countries, except that—

"(1) proper notice shall be given to all interested parties prior to any such meeting and such parties shall be given an opportunity to comment on the subjects to be discussed;

"(2) to the maximum extent feasible any meetings with such representatives shall be public, and a report of such proceedings shall be made part of the public record; and

"(3) any data the Commission obtained during such meetings and used by the Commission in developing any plan must be disclosed. In any such decision, the Commission must explain the manner in which such data was used.

"(c) Nothing in this section shall be construed to exempt any carrier from the antitrust laws.

"REPORTS BY CARRIERS; CONTENTS AND REQUIREMENTS GENERALLY

"Sec. 618. (a) The Commission is authorized to require annual reports from all carriers providing services subject to this title, and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with any such carrier, to prescribe the manner in which such reports shall be made, and to require from such persons specific answers to all questions upon which the Commission may need information. The Commission shall require only such reports as are necessary to perform its duties under this title.

"(b) Such reports shall be for a twelve-month period as the Commission shall designate and shall be filed with the Commission at its office in Washington, District of Columbia, within three months after the close of the year for which the report is made, unless additional time is granted in any case by the Commission; and if any person subject to the provisions of this section shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission, for making and filing the same, or shall fail to make a specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such person shall forfeit to the United States an amount assessed by the Commission in accordance with the procedure established in paragraph (2) and paragraph (3)(A) of section 503(b), which shall not exceed $2,500 for each and every day it shall continue to be in default with respect thereto. The Commission may by general or special orders require any such carriers to file monthly reports of earnings and expenses and to file periodical or special reports concerning any matters with respect to which the Commission is authorized or required by law to act. If any such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission, it shall be subject to the forfeitures above provided.

"RECORDS AND ACCOUNTS

"SEC. 619. (a)(1) The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memorandums to be kept by carriers in their provision of regulated international telecommunications services subject to this title, including the accounts, records, and memorandums of the movement of traffic, as well as of the receipts and expenditures of moneys.

"(2) Not later than the first anniversary of the date of enactment of this title, the Commission shall prescribe, and within the period prescribed by the Commission all carriers providing regulated international telecommunications services shall comply with, guidelines of general applicability relating to accounts, records, and memorandums which shall be designed at a minimum to accomplish a complete and proper allocation of all revenues and costs, including joint and common costs, costs incurred by affiliates other than fully separated affiliates, and any costs incurred before such date of enactment between regulated equipment and services and unregulated equipment and services. The Commission may require any carrier offering regulated international telecommunications services to establish and maintain such other separate accounts and supporting records and memorandums as the Commission determines necessary to carry out the purposes of this title.

"(b)(1) The Commission shall establish and prescribe—

"(A) the classes of property used by any carrier for the provision of regulated international telecommunications services which are subject to the regulatory authority of the Commission under this title; and

"(B) the methods by which investments in such classes of property may be recovered.

"(2) The methods specified in paragraph (1)(B) may include capital recovery schedules or percentage depreciation schedules. Such methods shall—

"(A) provide for the full recovery of any unrecovered amount of invested capital not later than the end of the remaining life of the property involved;

"(B) permit capital recovery and depreciation at rates comparable to those used by unregulated entities providing competitive services;

"(C) permit not more than the full amount of invested capital to be recovered;

"(D) for property used by a carrier in providing regulated international telecommunications services, include, as an allowable operating expense for ratemaking purposes, depreciation computed under any accelerated methods selected by such regulated carrier which are consistent with the capital recovery schedules or percentage depreciation schedules established and prescribed by the Commission, except that (i) the initial selection shall apply only to property placed in service on or after the first day of the first calendar year which begins after the date of the enactment of the International Telecommunications Deregulation Act of 1982; and (ii) any subsequent changes in such selection shall apply only to property placed in service on or after the date of such selection unless the carrier obtains the permission of the Commission to change such selection as to any other property; and

"(E) for property already in service on the first day of the first calendar year which begins after the date of the enactment of this title, include as an allowable operating expense for ratemaking purposes such amounts as may be necessary to recover all embedded invested capital through the use of the remaining life method of capital recovery or some other reasonable method approved by the Commission.

"(3) Any determination of the remaining life of property under paragraph (2) shall take into consideration competition, changes in technology, and remaining economic life.

"(c) The Commission shall at all times have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such carriers, and the provisions of this section respecting the preservation and destruction of books, papers, and documents shall apply thereto. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry and the Commission may suspend a charge or credit pending submission of proof by such person. Any provision of law prohibiting the disclosure of the contents of messages or communications shall not be deemed to prohibit the disclosure of any matter in accordance with the provisions of this section.

"(d) In case of failure or refusal on the part of any such carrier to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, memoranda, documents, papers, and correspondence as are kept to the inspection of the Commission or any of its authorized agents, such carrier shall forfeit to the United States an amount assessed by the

Commission in accordance with the procedure established in paragraph (2) and paragraph (3)(A) of section 503(b), which shall not exceed $100,000 for each day of the continuance of each such offense.

"(e) Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by any such carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions pertaining to the business of the carrier, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction, to a fine of not less than $10,000 nor more than $100,000 or imprisonment for a term of not less than one year nor more than three years, or both such fine and imprisonment: *Provided*, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, or documents which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

"(f) No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commission or by a court.

"(g) After the Commission has prescribed the forms and manner of keeping of accounts, records, and memoranda to be kept by any person as herein provided, it shall be unlawful for such person to keep any other accounts, records, or memoranda than those so prescribed or such as may be approved by the Commission or to keep the accounts in any other manner than that prescribed or approved by the Commission. Notice of alterations by the Commission in the required manner or form of keeping accounts shall be given to such persons by the Commission at least six months before the same are to take effect. The Commission shall have due regard to the different sizes of carriers in prescribing forms or guidelines under this section.

"(h) The Commission may prescribe different requirements under this section for different carriers if it deems such action consistent with the public interest.

"FULLY SEPARATED AFFILIATE

"SEC. 620. (a) A fully separated affiliate of a dominant carrier shall—

"(1) have no more than one member of its governing board who is a member of the governing board or officer or employee of such dominant carrier or any other affiliate of such dominant carrier;

"(2) have no officers or employees in common with any such dominant carrier or any other affiliate of such dominant carrier;

"(3) have not less than five individuals serving on its governing board of which not more than 50 per centum of whom are employees or officers of the fully separated affiliate which percentage shall also include any individual specified in subsection (a)(1); and

"(4) maintain books, records, and accounts separate from any such dominant carrier or any affiliate of such dominant carrier which identify all transactions with such dominant carrier or any affiliate of such dominant carrier and prepare financial statements which are in compliance with Federal financial reporting requirements (including filing such annual reports as may be required by the Securities and Exchange Commission, if the fully separated affiliate were a publicly held corporation) for publicly held corporations and file such statements with the Commission and make such statements available for public inspection.

"(b)(1) A fully separated affiliate may conduct business with respect to the transfer of goods, services, and facilities with its dominant carrier: *Provided*, That such business is conducted on a fully auditable and compensatory basis.

"(2) The conduct of business between a dominant carrier and a fully separated affiliate shall be pursuant to contract and shall be reported to the Commission under such rules as the Commission determines necessary. The Commission shall make such contracts, or portions of contracts, available for public inspection to the extent necessary to ensure proper enforcement of this section.

"(c) The conduct of business by any dominant carrier or any affiliate of the dominant carrier with any fully separated affiliate shall be carried out in the same manner as such business is conducted between such carrier or affiliate and any nonaffiliate. The conduct of business between a dominant carrier or any affiliate of the dominant carrier and any fully separated affiliate shall not be based upon, or include, any preference or discrimination arising out of affiliation.

"(d) Not later than forty-five days after the date of enactment of this title, the Commission shall establish procedures for the expeditious consideration of petitions filed under this section. Such regulations shall provide that final action on any such petition shall be taken by the Commission not later than one hundred and eighty days after filing.

"(e) The provisions of subsections (b) and (c) shall not apply to the provision of telecommunications facilities, services, or customer premises equipment during times of public peril, disaster, or national emergency.

"(f) The Commission may request information from the dominant carrier or any of its affiliates, or the fully separated affiliate regarding the conduct of business between the fully separated affiliate and the dominant carrier or any affiliate in order to properly enforce the provisions of this section.

"(g) All administrative or other general expenses provided by the dominant carrier on behalf of any affiliate or fully separated affiliate shall be provided only on a fully auditable and compensatory basis, and each affiliate and fully separated affiliate shall reimburse a dominant carrier for a pro rata share of the common administrative and general expenses of such carrier.

"(h) Any person (other than an individual) who violates any provision of this section or any rule, regulation, or order promulgated thereunder shall be fined not more than $1,000,000 for each such violation.

"(i) Nothing in this section shall be construed to permit cross-subsidization or any other anticompetitive conduct by a dominant carrier.

"ARRANGEMENTS RELATING TO THE TRANSITION TO FULL SEPARATION

"SEC. 621. (a) The provisions of this section and section 620 shall apply in any case in which a dominant carrier and its affiliates engage in the provision of unregulated international telecommunications facilities and services. Nothing in this section shall prohibit or otherwise restrict any dominant carrier, affiliate, or fully separated affiliate from exercising its independent, prudent business judgment in connection with business conducted with nonaffiliates.

"(b) A dominant carrier shall submit a plan to demonstrate that the dominant carrier and any affiliate have an accounting system which ensures a complete separation between the provision of regulated and unregulated services.

"(c) The provisions of this section shall not apply to the provision of telecommunications facilities, services, or customer-premises equipment during times of public peril, disaster, or national emergency.

"PROTECTION AND RESTORATION OF ESSENTIAL TELECOMMUNICATIONS

"SEC. 622. (a) The President shall have authority to require appropriate Federal departments and agencies, and any telecommunications carrier subject to the provisions of this title, to develop and establish arrangements for such mutual backup, restoration, and interconnection of international telecommunications facilities or services as may be necessary to avert public peril or disaster or to ensure the continuity of telecommunications essential to the national defense and security and the prompt restoration of any such telecommunications which may be interrupted by the failure or disruption of the facilities of any one or more such carriers.

"(b) The President shall have authority to require any carrier subject to the provisions of this title or fully separated affiliate to furnish international telecommunications services or facilities or customer premises equipment to any Federal agency if the President determines that—

"(1) the provision of such services or facilities or customer premises equipment is necessary and appropriate to promote the national defense and security or the emergency preparedness of the Nation; and

"(2)(A) there is a threat of war with a foreign nation, the Nation is at war with a foreign nation, or there exists a state of public peril or disaster or other national emergency; or

"(B) in order to provide for the national defense or security or the emergency preparedness of the Nation, there is an immediate need for such services and facilities or customer premises equipment, and such need cannot be met through reliance upon any other source of supply.

"(c) The President shall coordinate any Government program for enhancing the survivability of facilities used to provide international communications and protection against unauthorized interception of international telecommunications traffic, insuring, where appropriate, the availability of such programs to all telecommunications carriers willing and able to participate in such programs.

"(d) The Chairman of the Commission shall designate one of the Commissioners to serve as the 'National Security-Emergency Preparedness Commissioner' who shall be the Commission's representative to the President regarding national defense and security and emergency preparedness matters.

"(e) The President shall appoint an advisory council of not to exceed fifteen members to examine the structure, policy, and needs of Federal telecommunications management for national security and emergency preparedness under deregulation and to ensure that the United States shall have a technologically advanced and economically viable telecommunications industry for the purposes of the national defense and economic advancement.

"CUSTOMER-PREMISES EQUIPMENT

"SEC. 623. (a) Except as provided in this title, neither the Commission nor any State shall regulate the production, marketing, or other provision of customer-premises equipment used for international telecommunications services.

"(b)(1) The Commission may establish and enforce such minimum uniform technical standards for customer-premises equipment used for international telecommunications purposes as are necessary to prevent technical or operational harm to carrier facilities and to promote national defense and emergency preparedness of the Nation.

"(2) The Commission may establish requirements relating to labeling of customer-premises equipment used for international telecommunications services to indicate the country of origin and to provide such other consumer information as the Commission determines will be of significant interest.

"(3) The Commission may establish model technical standards for customer-premises equipment that would provide internal means for effective and beneficial coupling to hearing aids. Such standards shall not be binding upon any carrier or manufacturer of customer-premises equipment.

"(4) The Commission is authorized to deny certification of any customer-premises equipment of which more than one-half of the value added was manufactured in a country or countries which are determined in accordance with section 624 to be a country or countries which do not extend equitable market access to United States telecommunications equipment manufacturers. Such denial of certification shal not include customer-premises equipment from foreign countries which are in the process of extending equitable marke access to United States telecommunications equipment manufacturers or are engaged in substantive negotiations to exten such access.

"EQUITABLE MARKET ACCESS

"SEC. 624. (a) For the purpose of ensuring fair and equitable treatment of United States telecommunications enterprises seeking access to foreign markets, the Commission shall have authority to conduct inquiries and establish policies, rules, regulations, and requirements applicable to the entry of foreign carriers or foreign persons supplying telecommunications or information services or facilities into domestic United States telecommunications markets upon terms and conditions which are comparable to the terms and conditions under which United States persons are permitted entry into—

"(1) the foreign nation in which the operations of such foreign persons offering telecommunications or information services or facilities is based; and

"(2) the foreign nation under the laws of which such foreign telecommunications or information services or facilities are established.

No other provision of this Act shall be construed to limit or otherwise restrict the authority of the Commission established in this section.

"(b) The Commission shall adopt such rules, regulations, policies, requirements, and procedures, and may impose such restrictions upon foreign persons supplying telecommunications or information services or facilities as it determines to be necessary or appropriate to carry out the provisions of this subsection and to carry out its determinations under this subsection. Prior to exercise of any powers granted under this subsection, the Commission shall consult and coordinate with the International Task Force on Telecommunications and Information, established pursuant to title II of this Act, to assess the probable impact of any proposed exercise of such powers upon United States commercial and governmental interests, foreign policy, and international comity. The Commission may solicit the views of any private United States entities likely to be affected by such a proposed implementation of powers.

"APPLICABILITY OF TITLE

"SEC. 625. The provisions of this title shall be applicable only to telecommunications services which are designed to originate or terminate outside the United States. Except to the extent otherwise provided in this title and by the International Telecommunications Deregulation Act of 1982, the provisions of the Communications Act of 1934 which, immediately prior to the date of the enactment of the International Telecommunications Deregulation Act of 1982, were applicable to telecommunications services which are designed to originate or terminate outside the United States, including facilities used in connection therewith, shall continue to be applicable to such services and facilities.".

TITLE II—INTERNATIONAL TELECOMMUNICATIONS

SHORT TITLE

SEC. 201. This title may be cited as the "International Telecommunications and Information Coordination Act of 1982".

FINDINGS AND PURPOSE

SEC. 202. (a) The Congress finds that—

(1) the United States telecommunications and information industries make an important contribution to international commerce and are vital to the economy of the United States;

(2) although many governments of the world have recognized the strategic importance of their telecommunications and information industries and have developed policies to promote those industries, the United States has no coordinated international telecommunications and information policies;

(3) the authority and responsibility to develop such policies is divided among Federal agencies on a conflicting and often confusing basis; and

(4) the United States must have an effective mechanism for the development of telecommunications and information policies. The mechanism must coordi-

nate within the Federal Government and between the Federal Government and the private sector.

(b) The Congress declares that it is the policy of the United States—

(1) to maintain and promote a viable, strong, and technologically competitive telecommunications industry;

(2) to encourage and assist the open and fair provision of telecommunications and information goods and services in international commerce;

(3) to ensure the preservation and enhancement of the principles of the free flow of telecommunications services and information throughout the world;

(4) to ensure the equitable treatment of United States and foreign enterprises in all international markets of telecommunications and information goods and services; and

(5) to ensure the effective coordination and representation of United States interests in international forums.

ESTABLISHMENT OF THE TASK FORCE

SEC. 203. (a) There is established in the executive branch an International Telecommunications and Information Task Force (hereinafter in this title referred to as the "Task Force"). The Task Force shall be the principal coordinating body for the development of United States telecommunications and information policies.

(b) The membership of the Task Force shall consist of—

(1) the Secretary of Commerce, the Secretary of State, the Secretary of Defense, the Attorney General, the United States Trade Representative, the Chairman of the Federal Communications Commission, the Deputy Assistant Secretary of State for Transportation and Telecommunications Affairs, and the Director of the International Communications Agency; and

(2) the members of the Task Force designated in paragraph (1) may appoint a representative to serve in their place. The representative shall be an official of a rank no lower than that of Assistant Secretary or its statutory equivalent. In the case of the Federal Communications Commission, the Chairman may designate another Commissioner and the Director of the International Communications Agency may designate the Deputy Director of that agency. In the event that the Secretary of Commerce designates a representative, it shall be the Assistant for Communications and Information.

(c) The Chairman of the Task Force shall be the Secretary of Commerce and the Vice Chairman shall be the Secretary of State.

(d) Whenever the Task Force considers matters that affect the interests of Federal agencies not represented on the Task Force, the Chairman may invite the heads of such agencies to designate representatives to participate in the relevant deliberations of the Task Force.

(e) Members of the Task Force shall serve without additional compensation, but shall be reimbursed for actual and necessary expenses, including travel expenses, incurred by them in carrying out the duties of the Task Force.

(f) The Task Force shall terminate upon the expiration of the thirty-six-month period following the date of the enactment of this title, except that the President may, at any time during the six-month period preceding the expiration of the term of authority of the Task Force, extend the existence of the Task Force for a period of not more than three years. Any extension shall be made by Executive order. If the President chooses not to extend the Task Force, he shall, by Executive order, assign the responsibilities and authorities of the Task Force to one department or agency.

POWERS OF THE TASK FORCE

SEC. 204. (a) The Task Force shall develop consistent and comprehensive United States international telecommunications and information policies and shall advise the President with respect to those policies. In order to avoid duplicative and conflicting policies among Federal agencies, and to assure the greatest possible cooperation among such agencies, the Task Force shall—

(1) coordinate the policies of all Federal agencies involving international telecommunications and information;

(2) review all significant policy determinations of Federal agencies, and all proposed statements of United States policy by such agencies, relating to international telecommunications and information, and approve, disapprove, or modify any such policy, determination, or proposed statement where necessary;

(3) conduct a comprehensive study of the long range telecommunications and information goals of the United States, the specific telecommunications and information policies necessary to promote those goals and the strategies that will ensure that the United States achieves them; and

(4) conduct a review of the structures, procedures, and mechanisms which are utilized by the United States to develop telecommunications and information policy.

The Task Force shall make recommendations to appropriate Federal agencies in accordance with the findings of this review. Those recommendations shall also be provided to the President and the appropriate Committees of the Congress.

(b) The provisions of subsection (a)(2) shall not apply to any action or determination of an independent regulatory agency made pursuant to the rulemaking or adjudicatory procedures set forth in section 553, 554, 556, or 557 of title 5, United States Code, or pursuant to comparable statutory rulemaking or adjudicatory procedures.

(c) The Task Force shall make recommendations and reports to the President and the Congress on a regular basis.

TRANSFER OF FUNCTIONS

SEC. 205. (a) All functions vested in the Secretary of State by section 5-201 of Executive Order 12046 of March 27, 1978, to the extent that they relate to the determination of policies and positions, are transferred to the Task Force.

(b) All functions vested in the Secretary of Commerce by section 2-404 of Executive Order 12046 of March 27, 1978, to the extent that they relate to the determination and coordination of plans and policies, and, to the extent its provisions relate to international telecommunications and information, by section 2-501 of Executive Order 12046 of March 27, 1978, are transferred to the Task Force.

(c) All functions vested in the Director of the International Communications Agency by section 6 of Executive Order 12048 of March 27, 1978, to the extent that its provisions relate to responsibility for advising the President, are transferred to the Task Force.

ADMINSTRATIVE POWERS

SEC. 206. (a) For the purpose of carrying out its functions under this Act, the Task Force may—

(1) utilize those services, personnel, and facilities of the Department of State, the Department of Commerce, the International Communications Agency, and the United States Trade Representative, that are used for international telecommunications and information activities;

(2) utilize, with their consent, the services, personnel, and facilities of any other Federal agency; and

(3) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

(b) The Secretary of Commerce and the Secretary of State shall designate such employees as are necessary to serve as staff to the Task Force. The Secretary of Commerce shall designate a director for the staff of the Task Force.

ADVISORY COMMITTEE

SEC. 207. (a) The Task Force shall establish an Advisory Committee on International Telecommunications and Information (hereinafter in this title referred to as the "Committee") to provide overall policy guidance to the Task Force with respect to the functions of the Task Force. The Committee shall be composed of not more than thirty individuals and shall include representatives of labor, manufacturers of telecommunications, information, data processing equipment, other affected manufacturers, providers of telecommunications, information, and data processing services, other affected service industries, financial institutions, journalists, broadcasters, consumer interests, the legal profession, users of telecommunications services and equipment, and small business.

(b) The members of the Committee shall designate a Chairman and a Vice Chairman, who shall preside at meetings in the absence of the Chairman.

(c) The Committee shall meet at the call of the Chairman to provide policy advice, technical advice and information, and advice on other factors relevant to the activities of the Task Force. A meeting of the Committee shall be held at least once each calendar quarter.

(d) The Task Force shall, before approving under this Act any statement of new United States policy relating to international telecommunications and information, consult with the Committee for the purpose of obtaining the views of the Committee on the effect of the proposed submission on the social and economic interests of the United States.

(e) The Task Force shall make available to the Committee such staff, information, personnel, and administrative services and assistance as may reasonably be required to carry out the activities of the Committee.

(f) The Task Force shall adopt procedures for consulting with and obtaining information and advice from the Committee on a continuing and timely basis. Such consultation shall include the provision of information to the Committee as to (1) significant issues and developments, and (2) overall objectives and positions of the United States with respect to the development of telecommunications and information policies. The Task Force shall not be bound by the advice or recommendations of the Committee but the Task Force shall inform the Committee of failures to accept such advice or recommendations. The Task Force shall submit an annual report to the appropriate committees of the Congress on consultations with the Committee, issues involved in such consultations, and the reasons for not accepting any advice or recommendations of the Committee.

TITLE III—MISCELLANEOUS

TRANSITION OF COMMISSION AUTHORITY

SEC. 301. All orders, determinations, rules, regulations, permits, contracts, certificates, and privileges, which, pursuant to the provisions of titles II and III of the Communications Act of 1934, as amended—

(1) have been issued, made, granted, or allowed to become effective by the Federal Communications Commission; and

(2) were in effect prior to the enactment of this Act,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Commission, by any court of competent jurisdiction, or by operation of law.

INTERNATIONAL TELECOMMUNICATIONS

SEC. 302. (a) The provisions of this Act, and the amendments made thereby, shall apply only to the provision of international telecommunications services or facilities. For the purposes of this section, the term—

(1) "international telecommunications services" shall have the same meaning as that provided in section 603(6) of the Communications Act of 1934, and

(2) "international telecommunications facilities" means those facilities intended for the provision of international telecommunications services.

(b) A foreign telecommunications carrier or foreign information supplier or enterprise or entity or foreign person shall have the same meaning as that provided in section 603(7) of the Communications Act of 1934.

INTERNATIONAL ECONOMIC COMPETITION EVALUATION

SEC. 303. The Department of Commerce, to the extent feasible, shall analyze and quantify the effect of any significant rule or order of the Commission on international competition and the viability of the United States telecommunications industry, including, but not limited to, the effect of the action on the ability of United States industry to compete domestically and abroad. In addition, the analysis shall consider whether such action will delay the introduction of new equipment and services, inhibit the cooperation of the United States entities in competing jointly for foreign or domestic business, impose delays on United States firms, provide an advantage to foreign telecommunications carriers or suppliers of information or adversely affect research and development by United States industry.

COMMUNICATIONS SATELLITE ACT OF 1962

SEC. 304. (a) Section 303(a) of the Communications Satellite Act of 1962, as amended, is amended by striking all except the last three sentences of section 303(a) and substituting therefor the words "The corporation shall have a board of directors who shall be elected annually by the stockholders. All board members shall be citizens of the United States, and one board member shall be elected annually by the board to serve as chairman: *Provided, however*, That effective one year after this Act takes effect no directors incumbent shall be eligible to hold office as members of the board unless elected in accordance with this section.".

(b) Paragraph (8) of subsection (c) of section 201 of the Communications Satellite Act of 1962, as amended (47 U.S.C. 721(c)(8)), is repealed.

(c) Section 301 of the Communications Satellite Act of 1962, as amended (47 U.S.C. 731), is amended by deleting "to the District of Columbia Business Corporation Act" and inserting in lieu thereof "to the laws governing corporations in the jurisdiction within the United States in which it is incorporated".

(d) Section 303(a) of the Communications Satellite Act of 1962, as amended (47 U.S.C. 733(a)), is amended to read as follows:

"(a) The corporation shall have a board of directors who shall be elected annually by the stockholders. All board members shall be citizens of the United States, and one board member shall be elected annually by the board to serve as chairman: *Provided, however*, That effective one year after this Act takes effect no directors incumbent shall be eligible to hold office as members of the board unless elected in accordance with this section. The articles of incorporation of the corporation shall provide for cumulative voting and, in the manner prescribed by the laws governing corporations in the jurisdiction in which the corporation is incorporated, may be amended, altered, changed, or repealed by a vote of the outstanding shares of the voting capital stock of the corporation owned by stockholders who are communications common carriers and by stockholders who are not communications common carriers, voting together, if such vote complies with all other requirements of this chapter and of the articles of incorporation of the corporation with respect to the amendment, alteration, change, or repeal of such articles. The corporation may adopt such bylaws as shall, notwithstanding the provisions of the law of any State or of the District of Columbia, provide for the continued ability of the board to transact business under such circumstances of national emergency as the President of the United States, or the officer designated by him, may determine, after February 18, 1969, would not permit a prompt meeting of a majority of the board to transact business.".

(e) Section 304(a) of the Communications Satellite Act of 1962, as amended (47 U.S.C. 734(a)), is amended by inserting immediately before "without" the following: "with or".

(f) Section 304(e) of the Communications Satellite Act of 1962, as amended (47 U.S.C. 734(e)), is amended to read as follows:

"(g) Any record holder of the stock of the corporation, without regard to the percentage of stock so held, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, the corporation's record of shareholders and to make extracts therefrom.".

(h) Section 305(c) of the Communications Satellite Act of 1962, as amended (47 U.S.C. 735(c)), is amended to read as follows:

"(c) To carry out the foregoing purposes, the corporation shall have the usual powers conferred upon a stock corporation by the laws of the jurisdiction in which it is incorporated.".

(i) Section 201(c)(7) of the Communications Satellite Act of 1962 is amended to read:

"(7) grant appropriate authorization for the construction and operation of each satellite terminal station to: the corporation; one or more authorized carriers; the corporation and one or more such carriers jointly; or to persons other than the corporation or authorized carriers, as will best serve the public interest, convenience and necessity.".

(j) Section 103(13) of the Communications Satellite Act of 1962 is amended to read:

"(13) the terms 'authorized user' and 'authorized entity' means a user or entity, other than an authorized carrier, which has been authorized by the Commission to obtain channels of communications in the communications satellite directly from the corporation.".

(k) Section 201(c)(12) of the Communications Satellite Act of 1962 is amended to read:

"(12) authorize users and entities other than authorized carriers to acquire channels of communications in the communications satellite system directly from the corporation whenever the Commission finds such acquisition will serve the public interest.".

DEPUTY ASSISTANT SECRETARY OF STATE

SEC. 305. (a) There shall be within the Department of State a "Deputy Assistant Secretary of State for Transportation and Telecommunications Affairs". The Deputy Assistant Secretary of State for Transportation and Telecommunications Affairs shall be appointed by the President, with the advice and consent of the Senate, and shall serve at the pleasure of the President and shall have the rank of Ambassador. Such Deputy Assistant Secretary shall perform such duties as shall be prescribed by the Secretary of State, including the formulation and implementation of policy regarding foreign economic matters in the area of transportation and telecommunications, and advising the Secretary of State with respect thereto.

(b) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following:

"Deputy Assistant Secretary of State for Transportation and Telecommunications Affairs.".

CONFERENCES ON INTERNATIONAL TELECOMMUNICATIONS

SEC. 306. (a) In order to insure the effective representation of United States policy, when selecting delegations to conferences involving international telecommunications matters, the Secretary of State shall, where appropriate, select—

(1) representatives of affected agencies of the Government of the United States upon recommendation by any such agency; and

(2) representatives from the private sector.

(b) The provisions of sections 202, 203, 205, 207, and 209 of title 18, United States Code, shall not apply to representatives from the private sector on a delegation of the United States to an international telecommunications conference or meeting who are specifically designated to represent the interests of the United States at such conference or meeting, with respect to a particular matter.

(c) All such representatives shall maintain on file with the Department of State any financial disclosure report which may be required for special Government employees.

(d) For the purpose of this section, international telecommunications conferences and meetings involving international telecommunications matters shall include conferences and meetings of the International Telecommunication Union (ITU), the International Consultative Committees for Radio and for Telegraph and Telephone (CCIR and CCITT), the Organization for Economic Cooperation and Development (OECD), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Telecommunications Satellite Organization (INTELSAT), and the International Maritime Satellite Organization (INMARSAT).

REDESIGNATION OF TITLE VI OF THE COMMUNICATIONS ACT OF 1934

SEC. 307. The provisions of title VI of the Communications Act of 1934 as such title existed on the date immediately preceding the date of the enactment of this Act are hereby redesignated as title VII and sections 601 through 609 thereof are redesignated as sections 701 through 709, respectively.

○

Senator **GOLDWATER**. With that, we have scheduled this morning the Honorable Bernard J. Wunder, Assistant Secretary for Communications and Information, National Telecommunications and Information Administration. Mr. Wunder, you may take your seat and testify. You may submit your entire statement for printing in the record or proceed as you see fit.

STATEMENT OF HON. BERNARD J. WUNDER, JR., ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION, DEPARTMENT OF COMMERCE

Mr. **WUNDER**. Mr. Chairman, I would like to submit my statement for the record.

Senator **GOLDWATER**. All right.

Mr. **WUNDER**. I just have a few brief remarks about the bill. This bill, as I see it, is divided into four basic parts. The first establishes the policy of the United States to rely on competition, as opposed to regulation, in the delivery of international services where there is effective competition.

The second part deals with the executive branch structure and creates the Task Force on International Telecommunications Policy.

The third part deals with Comsat structure, and the fourth with reciprocity.

Taking the bill and dealing with each of the individual parts: In terms of the first part—reliance on competition and the deregulatory provisions—we in the administration would support the thrust of that approach. It is very similar to the approach taken domestically.

Listening to your opening statement, Mr. Chairman, about those who think it is foolish to proceed in this fashion—well, we do not think so. We think that competition and deregulation are important. We were the first country to really look at the question of competitive services in equipment and we see now that others are following—Great Britain and Japan, for instance. It is a question of us taking a leadership position in this area and convincing others of our goals and our policies, showing that competition does work, that there are not serious problems with it, and it is a policy that should be fostered.

In addition to those who are moving in the area, I have had numerous discussions with individuals from other foreign countries who are asking us basic questions about how does it work? I think something like this is good. So we would support that part.

The second part, with respect to the executive branch, Mr. Chairman: we would not support the creation of an international task force. The reason is that there exists in the executive branch today an interagency group under the chairmanship of Under Secretary Buckley that for all intents and purposes does what is contemplated by your bill. The FCC is an active member of that group.

I will say this, Mr. Chairman: In terms of the executive branch structure, I can agree that it is not optimal. But quite frankly, the more I think about this question, the more I come to the realization that structure, no matter how efficacious, is not necessarily the solution, and changes in the structure are not necessarily the solution to any substantive problems we have seen in the past.

I think the problem—and this is something you are to be congratulated on, and Senator Schmitt—is that this issue and the importance of this issue has to be raised in terms of its visibility. I think that is happening, and it is happening for the first time in my experience in Government with this issue, which is getting to be fairly long now.

We now have a situation where higher level people in the administration are actively involved. For the first time in my memory, we have high level officials at the White House, we have the Chairman of the FCC, we have high level officials at State. Secretary Baldrige is involved in this issue. Our Deputy Secretary is involved. Mr. Wright, who is now Deputy Director of OMB, has always been concerned about this issue and has moved into a position where he can assert some leadership at OMB.

So I think things have changed significantly. Granted, there was delay in appointing a chairman for the ITU plenipotentiary in Nairobi. I think, however, that significant progress has been made since Mr. Gardner has been appointed chairman. He is working very hard on this. He is spending a great deal of time. I think we are going to have a great delegation. We are looking at a lot of alternative proposals.

I think that the end that you sought to accomplish by the provision of this task force—which is to raise the consideration and to raise it at higher levels and to get people's attention that this is an important issue—is occurring as a result of your efforts. And I think the solution is just that and not necessarily a change in executive branch structure.

In terms of the third part of the bill, Mr. Chairman: In terms of Comsat reorganization and restructuring and changes in the Comsat provisions, we will support those provisions.

The last part of this bill as I see it is the reciprocity provisions. At this time, we cannot support provisions such as you have in your bill. The administration has taken a position in opposition to sectoral reciprocity, in favor of enhanced trade powers, so that we can deal with these issues on a bilateral basis.

As we have testified before, one of the primary approaches that we are following now is to get services included under the GATT. I must admit, Mr. Chairman, that we are sympathetic to the concerns that caused you to put provisions such as this in the bill. We are, in many countries, denied access, equal access, and equivalent access, to markets abroad although corporations from those same countries do business freely in the United States.

The problem, I think, with the sectoral approach, is that if you may have, for instance, very good relations with a country in terms of agriculture; we are exporting freely and we are not having difficulties; then difficulties in the telecommunications area arise and we attempt to impose reciprocal provisions in that area. What impact might it have on our agricultural exports? Would they simply go someplace else in retribution? That is the nature of our concern.

To sum up, Mr. Chairman, I think that, with the exception of the two points I mentioned, we do support the thrust of your legislation. There are some other areas that I consider to be technical that you will hear from DOD and the Department of State on in terms of technical changes that they would like to see, and we would of course support them.

With that, Mr. Chairman, I would be happy to answer any questions you might have.

Senator **GOLDWATER**. Thank you very much, Mr. Wunder. I do have a few questions. You have answered some of them, for which we are grateful.

Section 303 of the bill requires the Commerce Department to analyze and quantify the effect of significant rules and orders on international competition and other factors. Would this, as has been claimed, lead to needless delay in the regulatory process? Or, if done ex post facto, would this then be valueless?

How would one go about performing the task, and is such quantification possible in your mind?

Mr. **WUNDER**. I think it would be somewhat difficult, but not impossible, to have it done ex post facto. Prior review it would certainly deal with the question of delay. I think as a general proposition, Mr. Chairman, that I am generally supportive of the type of approach that is contemplated in section 303.

Senator **GOLDWATER**. You have testified in opposition to the bill's formation of an International Telecommunications and Information Task Force. Yet in testimony before this committee you have decried the lack of a focal point for the establishment of the U.S. policy in telecommunications. Do we now have a focal point or have you changed your mind?

Mr. **WUNDER**. As I indicated in my oral remarks, I do not believe that the existing structure is optimal. I think, Mr. Chairman, that what you see is that in terms of efficiency, democracy is not an optimal form of government, and we have essentially a democratic process—the small "d"—in the administration with respect to telecommunications policy.

I think in terms of changing my mind, I have slightly, in terms of whether or not a change in structure and the placement in the executive branch of an optimal structure would really have much difference. I think it would have a marginal difference at best.

I think the real question is how to get individuals in the executive branch exposed to this issue, knowledgeable on this issue, and aware of the importance of the issues that are involved. That is what we did not have in the past. That's what we're getting to now.

For these reasons, I think that at this time I would like to see the process go forward as it currently is and let us look at it in the executive branch. For instance, one of the things we are doing now on this very point is looking at the Executive order that divides responsibilities, with an eye toward a clarification of the ambiguities in the Executive order. And there are ambiguities, for sure.

Senator **GOLDWATER**. You feel, then, we are beginning to get a focal point out of the executive branch?

Mr. **WUNDER**. Yes, sir; we are beginning to get a much clearer focal point. We are beginning to get a much more coherent policy, and I think you are one of the reasons.

Senator **GOLDWATER**. Thank you.

When you appeared before the subcommittee on S. 2181, the recently passed Senate authorization for NTIA, you spoke of action within the administration to address the need for a coordinated function in international telecommunications. I believe you cited the Cabinet Council on Commerce and Trade, and you thought some movement was imminent.

If this is true, what is happening? Has the effort been abandoned?

Mr. WUNDER. No, sir, Mr. Chairman; the effort has not been abandoned. The situation is this: Rather than go to the Cabinet Council on Commerce and Trade, as was originally contemplated, what transpired was a meeting between Secretary Buckley and Secretary Baldrige where, prior to any move to take up this issue before the Cabinet Council on Commerce and Trade, there were some intermediate steps that we thought should be taken between State and Commerce, and those have occurred.

What is now happening as a result of that meeting between Secretary Buckley and Secretary Baldrige, is we are looking at the Executive Order 12046 with an eye toward clarifying ambiguities that exist in terms of division of authority and responsibility in this area, which both sides concede are there, which both Commerce and State concede are there. That is proceeding apace.

Second, we have had some intermediate agreement on the fact that the chairmanships of the various subcommittees of the interagency group are going to be more widely dispersed, instead of having State be the predominant chairman. Those are very positive steps, and they are taken with an eye toward getting a better focal point for policy in the executive branch.

Senator GOLDWATER. Is there something that this committee can do to push this effort along?

Mr. WUNDER. I think you have done quite nicely so far, Mr. Chairman. Your concern, and Senator Schmitt's concern, and Senator Packwood's concern, has clearly raised the level of attention on this issue. I think that it has been felt and it has been very positive.

At this time, I would not think that there needs to be another significant effort on the part of your subcommittee. I think that we are beginning to work out the difficulties that you have cited.

Senator GOLDWATER. Well, when we can help, do not hesitate to let us know.

In the past, the State Department has been an entity with a degree of influence in international policymaking in international telecommunications. Does the State Department as presently constituted have the adequate resources or focus to be our principal speaker in international forums in this particular area?

Mr. WUNDER. In terms of resources, I think, yes, State probably does have the resources. This is just a personal observation on my part in terms of their resources. I would personally like to see the various components of State brought together in a more cohesive form. There are multiple agencies within State that deal with international telecommunications issues. I think that the establishment of a coordinator, which is a recent act, is responsive to the concerns you have had and is going to ameliorate that situation considerably, especially if we get a good person in there to handle that.

I would personally like to see how that worked before undertaking more changes. I do not want to prejudge that issue, but I have positive feelings about it and it could very well be very efficacious.

Senator GOLDWATER. Do you not think that Commerce should actually have a bigger say in this? In fact, it is not so much of a foreign policy issue; it is a foreign trade issue, is it not?

Mr. WUNDER. I think it has both components. I think that is the problem.

In terms of having a bigger say, that is one of the things that was discussed very clearly between Secretary Baldrige and Secretary Buckley. At this point today, I have no difficulty with the say that Commerce has in these matters.

Senator GOLDWATER. Maybe I do not have all the faith in the State Department that I should, but they have enough trouble with foreign policy without getting into telecommunications.

You have testified in respect to sectoral reciprocity this morning. You did likewise before the House Telecommunications Subcommittee on other bills. Has the existence of reciprocity language in pending legislation had any effect on the U.S. negotiating strength in trade talks? If so, what has been the nature of that effect?

Mr. WUNDER. Quite frankly, Mr. Chairman, I think it has had some effect. That is an opinion. I do not have a document or something that I could say, yes, this conclusively shows that. But it is clearly my view it has had an effect.

I base that upon the movement the Japanese have made with respect to their nontariff trade barriers. I know this was followed by extensive discussions with myself and other members of the administration by persons in the Japanese Government who were seriously concerned about the reciprocity provisions.

I think that the reciprocity provisions have served a purpose of expressing a real concern on the part of the Congress about questions of trade imbalance and trade equity. From that standpoint, it seems to me that they have had a positive effect.

In terms of finally legislating and putting into law something like that, I think at this time it would be a mistake, because we are seeing some degree of progress.

Senator GOLDWATER. You acknowledge that the FCC's authority to promote competition internationally is limited. You would not give the Commission any reciprocity authority. Without such authority, how would our procompetitive policies fare in international markets? How do we crack open those markets that are closed to our carriers?

Mr. WUNDER. I think we do it two ways, Mr. Chairman. Step 1 is through a bilateral negotiation with those countries. I recently had a conversation with an official of the British Government where we talked about just this type of issue. I think that is approach No. 1.

I think approach No. 2, as Ambassador Brock has testified on many times, is to get services included within the GATT coverage.

Senator GOLDWATER. Would you feel better about the FCC's use of reciprocity authority if the exercise of such powers were subject to executive branch veto or modification?

Mr. **WUNDER**. I would feel better about it yes, sir. I think that that is not to say that we would support them, if there were a Presidential veto attached to them, but clearly, as I indicated, there are a multiplicity of issues involved in dealings between sovereign nations. The focus of the FCC is telecommunications and not agriculture, not the export of planes or steel, things about which they are not required to know and should not be expert on. I think the executive branch is required to have that expertise.

Consequently, in dealing with the broad panoply of issues between nations, it would clearly make me feel more positive, but not to the point where we could support them.

Senator **GOLDWATER**. What do you see as NTIA's function over the next 5 years?

Mr. **WUNDER**. In terms of international communications in the next 5 years, we intend to be considerably active in all of the conferences that are coming up, and there are a multiplicity of them, just as we have in the past. I intend personally to be involved in those activities. And in terms of the allocation of our resources, the international phase will probably be the No. 1 priority in the agency.

I think the resolution of many of the domestic issues with the A.T. & T. consent decree has put us in the position to do just that.

Senator **GOLDWATER**. Well, thank you very much, Mr. Wunder. We appreciate your testimony. It will help us a lot in our preparing the bill.

Mr. **WUNDER**. Thank you.

[The statement follows:]

STATEMENT OF HON. BERNARD J. WUNDER, JR., ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION, DEPARTMENT OF COMMERCE

Thank you for this opportunity to discuss some of the key provisions of S. 2469 with you. If enacted, the proposed "International Telecommunications Deregulation Act of 1982" would achieve a number of significant changes in this field that is increasingly important, both intrinsically and as an essential adjunct to our international commerce and trade.

The bill has four basic parts. The first part would alter existing Federal Communications Commission (FCC) regulation of the international communications business to facilitate greater reliance on competition and marketplace forces. Under the bill, carriers would be classified as dominant and regulated, or unregulated. Services that are subject to effective competition would be deregulated one year after enactment of the bill. Dominant carriers would be permitted to engage in unregulated services only through separate affiliates—an approach similar to that taken in the Subcommittee's earlier domestic communications legislation. Regulated carriers would be subject to streamlined tariff, contract filing, and facilities construction permit requirements. Regulated carriers would continue to be subject to facilities and equipment interconnection obligations, and they would also be required to provide service on reasonable demand. Most significantly, this first part of S. 2469 would establish competition as a basic goal and purpose of FCC international regulation, and the Commission would be directed to take steps to foster more effective and efficient competition in this field generally.

The second basic part of S. 2469 addresses the issue of Executive branch development and coordination of international communications policies. Title II of the bill would legislatively establish an eight-member "Task Force on International Telecommunications and Information," headed by the Secretary of Commerce and the Secretary of State, as vice chairman. The Task Force would be directed to oversee the pertinent activities of Executive agencies in the international sector. It would be advised by a diversified, 30-member advisory committee. The Task Force would be required to develop more coherent and consistent Executive policies in the international telecommunications field, and would have special responsibilities concerning our planning for and participation in international conferences.

A third basic part of S. 2469 deals with the organization, structure, and operations of the Communications Satellite Corporation (Comsat). The firm would be "privatized" fully through the elimination of the Presidentially appointed directors. Changes in Comsat's incorporation and corporate affairs would be sanctioned, in order to permit the firm to function as any other corporation. The FCC's authority to allow Comsat to retail its services directly to users would be confirmed. In the past, as you know, the so-called "Authorized Users" doctrine has generally restricted Comsat to serving as a carrier's carrier. The language in the 1962 Comsat Act dealing with ownership and operation of earth terminals would also be altered to allow for carriers and users to own such facilities. At present, such earth station facilities are usually owned by consortiums of carriers, and users are generally not afforded the option of using their own.

The fourth basic part of S. 2469 concerns what can be labeled trade and representational issues. Under the proposed "Equitable Market Access" provision, for example, the FCC would be empowered to investigate international communications and information market conditions, and to place restrictions on foreign companies seeking to compete in our market if their own governments restrict the competitive opportunities afforded American firms. See proposed section 624. Similarly, under proposed section 608, the FCC could place limits on foreign carrier resale activities, notwithstanding the general deregulation of resale the bill would achieve, if those carriers' home governments restrict U.S. resale activities abroad. Generalized restrictions on foreign participation in domestic U.S. markets could not be imposed by the FCC without first consulting with the International Task Force, established under proposed new section 203. Resale limits on foreign firms, however, could apparently be imposed without such consultation.

In addition to these reciprocity provisions, which are similar to those that were contained in S. 898, proposed new section 303 of S. 2469 would direct the Commerce Department to evaluate the trade implications of FCC actions in the international telecommunications field. Finally, section 306 of the bill would require the State Department to name affected agency and private sector representatives to the delegations sent to international telecommunications conferences. The language of this last section of the bill is similar to that contained in both NTIA's fiscal 1983 authorization bill (S. 2181, sec. 2) as well as the State Department's fiscal 1982-83 authorization (H.R. 4814, sec. 117).

The Administration supports the basic thrust of the deregulatory provisions contained in the first and third sections of S. 2469, namely, those provisions that would deregulate international telecommunications services generally, and facilitate Comsat's full participation in the field. We support the orderly deregulation of effectively competitive international communications carriers and services, and the proposed requirement that dominant firms—presumably Comsat the AT&T—be allowed to participate in offering unregulated, competitive services only by way of separate, arm's length affiliates. We support the proposed clarification of the "Authorized Users" doctrine and the proposed changes in earth station ownership policies. We think in particular that the right of the U.S. Government to deal directly with Comsat should be affirmed.

While we are sympathetic to and, indeed, support the goals of the second part of the bill—the International Task Force provisions—we believe that these objectives can be achieved and, in fact, are now being pursued within existing legislation. Commerce, State, Defense, and the U.S. Trade Representatives currently work together through an organized interagency group that functions under the auspices of the Under Secretary for Security Assistance, Science, and Technology. Through this forum, and in other ways, the various Executive branch agencies with functions and responsibilities in the international communications field already meet to review developments and proposed actions. Legislation requiring what is done already, in our view, is not needed. The Administration, accordingly, does not support passage of the International Task Force provisions of S. 2469.

The provisions of the bill that provide for special, sectoral reciprocity, administered by the FCC, are objectionable to the Administration, and we are therefore opposed to their enactment. The Administration strongly supports the concept of full and fair market access by American firms abroad. We believe, however, that this objective should be secured through broader trade legislation, and not through the passage of laws targeting specific industries and lines of commerce for reciprocity consideration.

We favor the passage of legislation dealing with the private representational issue. We believe that private sector experts should be members of the delegations that we send to international telecommunications conferences. Much of the relevant radio frequency engineering experience needed for our effective participation in these conferences lies in the private sector. This topic has been the focus of recurrent—and, in our view, needless—controversy for the past few years. We thus support the Subcommittee in its efforts to resolve the matter, and to do so in a fashion that will facilitate our more effective international participation.

International telecommunications is critically important to our country, and the Subcommittee is to be strongly commended for proposing legislation that will, as Senator Goldwater noted, stimulate informed and considered debate on these important issues. International telecommunications and related products constitute the third largest component of our foreign trade, accounting for more than $16 billion in trade in 1980. These export sales are increasingly critical to restoring and maintaining the strength of our competitive, free-enterprise economy. Every billion dollars in exports accounts for between 20 to 40,000 American jobs, and the telecommunications and information sectors represent a vital "sunrise" business whose development we should further, in order to provide future employment opportunities.

International telecommunications makes possible an estimated $35 billion in trade in international services annually. Efficient and effective international communications and information services are essential to the sound management of the more than $500 million in U.S. bank loans and other investments we have abroad. International telecommunications systems also play an obvious and important role in strengthening our national security and defense.

Changes in technology, liberalized FCC rules concerning competition and open entry, plus the enactment recently of this Subcommittee's 1981 Record Carrier Competition Act (P.L. 97-130), have made changing the outmoded rules and regulations that have governing the international field necessary. The Administration strongly supports prompt passage of sound legislation providing for the deregulation of effectively competitive international communications services. Although we have reservations concerning, or, indeed, are opposed to, other provisions of this legislation—those dealing with sectoral reciprocity and the International Task Force, most notably—we stand ready to work affirmatively with the Subcommittee in developing such sound and mutually satisfactory legislation.

Senator GOLDWATER. Our next testimony will be from Mr. Mark Fowler, Chairman of the Federal Communications Commission. Mr. Fowler, you may proceed as you desire.

STATEMENT OF HON. MARK FOWLER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. FOWLER. Thank you, Senator, and good morning. I have just a brief statement here. I have a longer one I am submitting for the record.

I am pleased to have the opportunity to present my views on S. 2469, the International Telecommunications Deregulation Act of 1982. This, of course, is the first effort to take a comprehensive look at modernizing the Commission's governing statutes as they apply to international telecommunications.

I firmly believe that increased competition and deregulation have the potential to provide many of the benefits to users of international telecommunications that users of U.S. domestic telecommunications are already beginning to enjoy.

As I stated on June 2, 1981, in testimony before this committee, we share and support the major policy goal expressed in this bill, which is to rely wherever and whenever possible on marketplace competition and on the private sector to provide all telocommunications services.

Moreover, we strongly support the underlying premise of the bill of reducing and eliminating unnecessary regulation. This analysis also applies to international telecommunications. However, there are important differences in the underlying structure of our international and domestic telecommunications markets.

While we should pursue the same philosophical goal in the international arena, we must recognize the differences and fashion our regulatory authority accordingly. As recognized by you, Senator Goldwater, in your statement introducing S. 2469, the goals of increased competition and deregulation in international telecommunications may not be attainable to the degree or with the rapidity possible in the domestic telecommunications area.

However, I believe we can have a beneficial effect, and that we should direct U.S. policy toward those goals while recognizing the underlying structure of the international telecommunications market. Because the international telecommunications market is unique, new legislation must give the Commission the flexibility to fashion its regulations to the conditions in the marketplace.

We must have the authorty: (1) To encourage the development of an international telecommunications marketplace where market forces can operate; (2) to prevent unilateral foreign telecommunications entities from exploiting a competitive U.S. international telecommunications industry to the disadvantage of our industry or users; and (3) to permit the Commission to use its expertise and authority in conjunction with other Federal agencies to develop and implement U.S. international telecommunications and information policies which will advance U.S. interests in foreign commerce and foreign policy.

I believe that S. 2469 generally recognizes the unique nature of the international market. As a result, it does not designate any carrier as the dominant regulated carrier or specify any service to be a regulated service. This is left for the Commission's determination under the criteria specified in title VI. The Commission appropriately is given authority subsequently to change the classification of carriers among dominant regulated, regulated, and unregulated, in accordance with the standards set forth in the bill.

The Commission also is appropriately given authority subsequently to reclassify international services. Such regulatory flexibility properly recognizes that conditions in the marketplace can change, due to external influences, and the Commission is granted sufficient authority to react accordingly. I approve of this approach.

I am also pleased to see that both tariff and facilities authorization procedures are streamlined in S. 2469. However, in several respects, the tariff provisions of S. 2469 appear to constrain Commission flexibility in reviewing tariffs for regulated services to a greater extent than the provisions of the existing Communications Act. I am concerned that in circumstances where regulation of carriers is imposed, the Commission should retain the flexibility to implement competition and deregulation efficiently.

For example, S. 2469 appears to foreclose the Commission's discretion to reject a tariff outright when it is in conflict with statutory or case law or established Commission policy. While occasions

right rejection of tariffs which are grossly deficient saves both the Commission and affected parties the time and expense of an administrative hearing.

In a similar vein, S. 2469 apparently ends the Commission's authority partially or temporarily to authorize tariffs, which has on several occasions avoided the necessity of a contested proceeding embracing an entire tariff, while expediting the carrier's correction of deficient elements in the tariff.

A diminished Commission authority to extend the effective date of tariffs, capped at 30 days by S. 2469, also seems to require an administrative proceeding in situations which might otherwise be remedied by an extended effective date, by giving the carrier an opportunity to file revisions, or by allowing settlement negotiations among the carriers and petitioning parties

Finally, the bill apparently terminates the Commission's current authority to prescribe tariff terms and conditions while conferring authority to modify or vacate intercarrier contracts. While we expect the occasions for prescription of tariff terms will become increasingly rare as competition improves, the prescription mechanism is useful as a last resort and comports with the authority conferred by S. 2469 over contracts between carriers.

The Commission is committed to streamlining its tariff procedures generally and expediting consideration of disputed tariff matters. At the same time, I believe the peculiarities and uncertainties of the international arena are such that the Commission will be better prepared to deregulate it efficiently and regulate by tariff where it must if the existing act's flexibility to evaluate tariff terms and conditions is generally preserved.

Title II of S. 2469 establishes a task force to develop coordinated and comprehensive U.S. international telecommunications and information policies. The creation of a task force to coordinate the development of our international telecommunications policy has been under debate for some time.

Clearly, improved coordination of international telecommunications and information policies is necessary. Indeed, it is now one of our primary goals at the FCC. International telecommunications and information are becoming increasingly important elements in foreign commerce and foreign policy, as well as our defense capability.

Furthermore, they affect many segments of the economy and society. That requires the various Federal agencies with responsibilities in these areas to closely coordinate their policy formulation.

While we support the goals and objectives of title II of the bill, the creation of the task force to accomplish the desired coordination may however cause a delay in policy formulation and implementation.

I will not address the specific provisions of title II or detail the various disadvantages of the task force approach at this time. However, I believe the improved coordination in the executive branch is already taking place. I am referring to the existing interagency group under the chairmanship of the Department of State and the vice chairmanship of NTIA.

The bill grants the Commission considerable authority to impose conditions on foreign owned and controlled entities consistent with the restrictions placed on U.S. firms by the foreign entities' home government. It is authorized to impose reciprocal conditions on resale of international telecommunications services by foreign entities.

It may deny certification of customer premises equipment of which more than one-half the value added was manufactured in a country which does not extend equitable market access to U.S. manufacturers of telecommunications equipment. It may also impose reciprocal conditions on the entry of foreign owned and controlled carriers and foreign persons supplying telecommunications or information services or facilities.

These provisions in the aggregate considerably broaden the Commission's existing authority; in particular, the authority and responsibility placed with the Commission by section 624 to impose conditions on foreign suppliers of information services and facilities would expand the Commission's responsibility beyond our traditional common carrier concern.

The approach taken here is what is commonly called sectoral reciprocity. That is, U.S. trade policies in a particular sector of the international economy are based on a foreign government's treatment of U.S. entities in that sector. I have two concerns with this approach, one procedural and one substantive.

First, the FCC has neither the expertise nor the awareness of broader considerations of trade and foreign policy which are necessary to make the threshold judgments required in this area. It is my sense that a consensus is developing in favor of a general as opposed to a sectoral approach to reciprocity. Under the general approach, the responsibility and authority to determine whether reciprocal restrictions are appropriate should be lodged in the executive branch.

My second concern is that the narrow focus on international telecommunications issues inherent in the sectoral approach may be counterproductive. Evaluating the treatment of U.S. firms by governments with different economic philosophies requires a subtle and difficult judgment. It is made more complex by artificially limiting the scope of the inquiry. Telecommunications plays different roles in different countries, and mirror image policies are not always appropriate.

In addition, it is extremely difficult to determine with precision what products and services ranging from computers to fiber optic cables to switching equipment should properly be considered to be part of the telecommunications marketplace.

S. 2469 also effects a number of amendments to the Communications Satellite Act of 1962. The bill would appear to permit Comsat to function more in the fashion of an ordinary corporation than currently. I support this approach.

In sum, I endorse the basic thrust of much of S. 2469. We should permit market forces rather than a regulatory body to make as many economic decisions as possible. We, of course, are prepared to work with the Congress on the fine tuning of the legislation.

I thank you very much, Mr. Chairman, for this chance to express my views. I have with me my Assistant for International Affairs, Kalman Schaefer, and we would be pleased to answer any questions you might have.

Senator **Goldwater**. It is nice to have you with us.

Mr. Fowler, you acknowledge that the promotion of competition in the provision of international communications services is far more difficult than in the domestic sphere. We only control one half of the service, after all. Yet you oppose the reciprocity authority the bill gives the FCC. Without such authority, how do you propose that these procompetitive policies will be enforced?

Mr. **Fowler**. I think you raise a very valid concern. Certainly, I think it is the sense of our Commission that we strongly endorse the concept of reciprocity. For too long, for some reasons I do not quite understand, we were afraid to raise it. We have in fact the richest market in the world, and it seems to me that we ought to insist that we be treated similarly in our dealings with foreign entities. My problem simply is the way you do it, and the way you execute it. We are dealing with matters involving reciprocity, and typically we are dealing with matters of trade which are not peculiarly within our expertise. There may be some defense or security implications beyond our expertise, and there may be some foreign policy implications which may be beyond our expertise, which is telecommunications. These all overlap each other.

More importantly, I think, if we look at one sector only as Under Secretary Wunder pointed out, and I agree with this, we ought to be able to look at the whole panoply of relations with another country, including domestic services. It seems to me the FCC is not the entity that should undertake that review and linkage within the United States. It should be put in the executive department, and they ought to be able to look at simply more than one sector. I think this comports with what the Special Trade Representative, Bill Brock, has testified to as well.

I think there is an emerging consensus that sectoral reciprocity would not be the best way to go, but again, we are quarreling over the way we do it, not with the basic principle.

Senator **Goldwater**. I agree, it is not going to be easy, because we are dealing in this business with Government-controlled communications, Government-financed communications, and it is not going to be easy.

Mr. Fowler, back in September 1981 in oversight hearings before Congressman English's subcommittee, you gave strong testimony in favor of reciprocity, sectoral or otherwise. Your endorsement was unlimited. What events have transpired since that time to make you change your mind?

Mr. **Fowler**. Well, Senator, my first response to that would be that after that hearing, I ordered that we do an internal, in-house, very careful, comprehensive study of the whole issue of reciprocity. That study focused on the issues involved, the subissues and what this agency's position ought to be. Reciprocity is one of those issues you can smell coming, and it is too much with us, as someone once said, even now, but properly so.

I think as a result of reviewing testimony of others, I came to the conclusion that sectoral reciprocity is simply too narrow a view, that you have to look at the whole relationship with another country or block of countries. I think we make our efforts to insist upon reciprocal treatment stronger when we look at a much broader landscape and in effect more linkages. So, I think it can be more effective, but again, I do not think our agency is the one. We have a narrow telecommunications viewpoint, and it has to be looked at by State, the other department agencies, Commerce, the Special Trade Representative, look at all the range of issues involving trade with another country, and then be able to link all the issues, including telecommunications, and say this is what our position is. I think it is more effective that way.

So, that is the conclusion I have reached, although I would say we are still looking at it, and our thinking is still evolving, but I think that is the sense of where we are going now.

Senator **Goldwater**. This bill contains language indicating a policy that the United States will not restrict the resale or shared use of any regulated international telecommunications service. I have several questions on that. Has the FCC taken a stand on this issue?

Mr. **Fowler**. Senator, we are in the process right now of preparing an item for the Commissioners on that very issue. Therefore, I would rather defer on those series of questions if I may. Otherwise, I may be into an area of prejudgment. It is something we are now actively considering now for Commission action in the very near future.

Senator **Goldwater**. So, the matter has not been resolved?

Mr. **Fowler**. Not yet, sir; no, sir.

Senator **Goldwater**. Without telling how you plan to resolve this issue, can you discuss generally the nature of the public's reaction to the Commission's proposal?

Mr. **Fowler**. Well, I have not seen the comments in this area. Maybe Mr. Schaefer here could give you some indication of what has been filed.

Mr. **Schaefer**. Senator, I believe the general comments are essentially divided into two groups, those who favor a total deregulatory approach and those who feel that the Commission ought to play a role. The Common Carrier Bureau is currently analyzing the petitions that are before it and are preparing the item for the Commission's decision.

Senator **Goldwater**. Well, has this plan been—has it become generally enough known for you to receive any public reaction to the proposal?

Mr. **Schaefer**. Yes; there have been proposals. Of course, as you know, about 2 years ago the Commission dealt with the resale and shared use matter, and there has been substantial U.S. public reaction to that, as well as international. As the Chairman indicated, this is what causes the Commission to review this whole issue.

Mr. **Fowler**. We had very stiff outcries from foreign PTT's who, one might expect for their own reasons, do not like the idea of resale and shared use as much as we would like.

Senator **Goldwater**. You stated in your testimony that the bill allows Comsat to provide retail services. What is the status of the FCC's authorized user proceeding?

Mr. **Fowler**. That will be up before the Commission, Senator, I believe, in either the next 30 or next 60 days. We are moving rapidly on that. I think it is some time in July.

Senator **Goldwater**. Has there been any general objection to that provision?

Mr. **Fowler**. There has been a lot of discussion, and without commenting too specifically, since I may have to vote on this very soon, the basic concepts for promoting competition in this area, of giving Comsat more flexibility, I think, are things that we can support, and I do think we are clearly moving in the right direction there.

Senator GOLDWATER. You have endorsed maintaining the status quo with respect to the coordination of those U.S. entities responsible for international telecommunications policymaking. You have endorsed the need for such coordination, but is this interagency coordination agency that you speak of simply ad hoc?

Mr. FOWLER. It is not in any statute that I am aware of, but we do meet on a regular quarterly basis, and we have meetings more frequently than that, depending on the need. I do not think that we have accepted a status quo position. In fact, when I came into office because of urgings of your staff, Senator Schmitt, and yourself, who have highlighted this issue, as well as Congressman Wirth on the House side and Jim Broyhill, it became apparent to me that there was a big problem in the international arena.

There was a problem in that people were not addressing the issues. Our people and experts did not know to whom to turn. There did not seem to be any sense of coordination. I think it may be fair to say that, in the past, there was not very much coordination. I think when the administration came in, however, Under Secretary Buckley and Secretary Baldrige and others, they went to work on the problem. At the Commission we set up a special department within the agency to deal with nothing but the coordination of international matters, and Konnie Schaefer here heads up that.

We have been meeting on a regular basis, and I think that the intergovernmental group has been effective. I think it depends, as Secretary Wunder said, on the issue having been highlighted by Congress, and we have gotten the message. Then, I think, it depends on the people. I think if you build another bureaucracy that is not going to be the answer to the question. I think it will cause more delay. I think it will make us subject to even further procedures, which I think can slow down the need for effective consultation with the executive branch and others in dealing with these foreign issues.

I am afraid that if we have another entity built in there we are going to get bogged down.

Senator GOLDWATER. A number of people have expressed difficulty in distinguishing between the Commission's function under the bill and the facilities planning process and its facilities construction process approval under section 616. How do you distinguish the two functions? That is, is there any need for section 616 if the FCC has for all practical purposes approved facilities construction and use during the planning stage?

Mr. FOWLER. I think it would be helpful to have that legislation. I believe we have that authority now. It would be nice to put it into the statute, because there has been some litigation on that point. Technically, we do not negotiate. That is done through the Department of State. The consultative process is something that for the time being goes hand in glove with our authorization of facilities process, necessarily. As long as we do not have a full marketplace interplay in international communications, we are forced to rely in large measure on this consultative process with the foreign PTT's, and that is part and parcel of, yes, our authorization of facilities process.

As they are presently drafted, I think sections 616 and 617 provide the Commission with closely related but different authority over international transmission facilities. Section 616 specifies the extent of the Commission's authority to require prior approval for the construction, acquisition or use of international transmission facilities. Section 617 allows the Commission to develop procedures to assess facilities proposals of U.S. international carriers and to develop guidelines to aid in the planning of such facilities. Section 617 does not appear to require U.S. international carriers to obtain prior approval for the construction or acquisition of facilities or clearly provide the Commission with any mechanism for enforcing compliance with any guidelines it might develop. This authority is provided by section 616. For example, it is section 616(b)(3) which grants the Commission authority to authorize a long term facilities plan in whole or part.

Mr. **Schaefer**. Mr. Chairman, may I add to what Chairman Fowler pointed out? The consultative process has been in place for some years now. There is consensus among the carriers and the Government agencies that it has been a very useful one, useful in the sense that it looks ahead, particularly in the Atlantic area, for an orderly provision or planning of facilities to accommodate the potential demand for services.

Through this process, the Commission, being a very active participant, is not caught off-guard once an application comes in. Following consultations the FCC has to initiate its own process of examining the public interest concerns of a particular facility. The provisions of this bill will support the consultative process, because there have been those who were concerned as to what role the Commission should play in it, and whether it should be in the process at all.

I think that Chairman Fowler indicated that it has been a good process. We should continue to play a leading role in it. And certainly your bill confirms that.

Senator **Goldwater**. Thank you.

One more question. The Department of Defense will testify that it should be allowed to deal directly with Comsat without having to go through a middleman. This bill would clarify the FCC's authority to do so. The Commission, however, has shown some reluctance. Why?

Mr. **Fowler**. I am not aware of that reluctance myself, Senator, but we have what we call International Day coming up, where we will be dealing with that as part of our Comsat package. So I cannot comment any more on it at this point, but obviously it will get very sympathetic consideration. That is all I can say.

Senator **Goldwater**. Of course, Defense has to depend so much on this.

Mr. **Fowler**. Yes, sir.

Senator **Goldwater**. Thank you very much, Mr. Fowler, for coming. We appreciate your testimony.

Mr. **Fowler**. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF HON. MARK S. FOWLER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

I am pleased to have the opportunity to present my views on S. 2469, the International Telecommunications Deregulation Act of 1982. This is the first attempt to take a comprehensive look at modernizing the Commission's governing statutes as they apply to international telecommunications.

I firmly believe that increased competition and deregulation has the potential to provide many of the benefits to users of international telecommunications that users of U.S. domestic telecommunications are already beginning to enjoy. As I stated on June 2, 1981, in my testimony before the Committee on its domestic bill, S. 898, we "share and support the major policy goal expressed in this bill which is 'to rely wherever and whenever possible on marketplace competition and on the private sector to provide all telecommunications services . . .' Moreover, we strongly support the underlying premise of the bill of reducing and eliminating unnecessary regulation." This analysis also applies to international telecommunications.

However, there are important differences in the underlying structure of our international and domestic telecommunications markets. While we should pursue the same philosophical goal in the international arena, we must recognize the differences and fashion our regulatory authority accordingly. Thus, it is appropriate to begin my testimony with a brief description of that structure.

Unlike domestic telecommunications, international telecommunications facilities and services are jointly provided by the various U.S. international carriers and the telecommunications entities of other countries. In most other countries there is but a single entity responsible for international telecommunications.

By virtue of their joint ownership of the transmission pipeline, foreign telecommunications entities have substantial control over the use of facilities owned jointly with U.S. firms. The necessity for U.S. international carriers to either obtain an operating agreement with a foreign telecommunications entity, or be granted permission by the foreign government to operate in the country, provides the foreign telecommunications entity or government with substantial control in determining the number of U.S. carriers that can provide direct services to that country. Joint provision of services also permits foreign entities to have a significant influence over the types of international services available to U.S. users as well as the terms, conditions and, to a degree, the costs for use of those services. Joint ownership also provides foreign entities with a substantial voice in determining the type of facilities constructed.

Of course, U.S. telecommunications policies and the operational decisions of the U.S. international carriers exert a like effect on the international facilities and services available to users in other countries.

As recognized by Senator Goldwater in this statement introducing S. 2469, the goals of increased competition and deregulation in international telecommunications may not be attainable to the degree or with the rapidity possible in the domestic telecommunications area. However, I believe that we can have a beneficial effect and that we should direct U.S. policy toward those goals, while recognizing the underlying structure of the international telecommunications market.

Our analysis of S. 2469 addresses the authority it provides the Commission to further these pro-competitive goals and makes particular note of the flexibility it provides the Commission to reduce its regulation as those goals are attained.

Because the international telecommunications market is unique, new legislation must give the Commission the flexibility to fashion its regulations to the conditions in the marketplace. We must have the authority: (1) to encourage the development of an international telecommunications marketplace where market forces can operate; (2) to prevent unilateral foreign telecommunications entities from exploiting a competitive U.S. international telecommunications industry to the disadvantage of our industry or users; and (3) to permit the Commission to use its expertise and authority, in conjunction with other Federal agencies, to develop and implement U.S. international telecommunications and information policies which will advance U.S. interests in foreign commerce and foreign policy.

I believe that S. 2469 generally recognizes the unique nature of the international market. As a result, it does not designate any carrier as a dominant regulated carrier or specify any service to be a regulated service. This is left for the Commission's determination under the criteria specified in Title VI. It appears to be the intent of Section 607 that international services now regulated by the Commission become unregulated unless the Commission, within one year from enactment, determines what services should continue to be regulated in accordance with the procedures specified in the Bill.

The Commission appropriately is given authority subsequently to change the classification of carriers among dominant regulated, regulated and unregulated in accordance with the standards set forth in the Bill. The Commission also is given authority subsequently to reclassify international services. Such regulatory flexibility properly recognizes that conditions in the marketplace can change due to external influence as the Commission is granted sufficient authority to react accordingly. I approve of this approach.

The Commission may also classify and reclassify carriers as dominant. However, the criteria by which the Commission is to make this classification are derived from the S. 898 framework. Because of the ability of foreign telecommunications entities to control entry into the international market, the notion of dominance may have less value as an index of effective competition than in the case of domestic telecommunications. My feeling is that we should be cautious in applying the term in constructing a new international regulatory scheme.

I am also pleased to see that both tariff and facilities authorization procedures are streamlined in S. 2469. However, in several respects, the tariff provisions of S. 2469 appear to constrain Commission flexibility in reviewing tariffs for regulated services to a greater extent than the provisions of the existing Comunications Act. I am concerned that in circumstances where regulation of carriers is imposed, the Commission should retain the flexibility to implement competition and deregulation efficiently.

For example, S. 2469 appears to foreclose the Commission's discretion to reject a tariff outright when it is in conflict with statutory or case law, or established Commission policy. While occasions for the exercise of this authority can be expected to diminish, outright rejection of tariffs which are grossly deficient saves both the Commission and affected parties the time and expense of an administrative hearing. In a similar vein, S. 2469 apparently ends the Commission's authority, partially or temporarily, to authorize tariffs, presently found in Section 204 of the Act, which has on several occasions avoided the necessity of a contested proceeding embracing an entire tariff, while expediting the carrier's correction of deficient elements in the tariff. A diminished Commission authority to extend the effective date of tariffs, capped at 30 days by S. 2469, also seems to require an administrative proceeding in situations which might otherwise be remedied by an extended effective date, by giving the carrier an opportunity to file revisions, or by allowing settlement negotiations among the carriers and petitioning parties. Finally, the bill apparently terminates the Commission's current authority to prescribe tariff terms and conditions, while conferring authority to prescribe tariff terms and conditions, while conferring authority to modify or vacate inter-carrier contracts. While we expect the occasions for prescription of tariff terms will become increasingly rare as competition improves, the prescription mechanism is useful as a "last resort" and comports with the authority conferred by S. 2469 over contracts between carriers.

The Commission is committed to streamlining its tariff procedures generally and expediting consideration of disputed tariff matters. At the same time, I believe the peculiarities and uncertainties of the international arena are such that the Commission will be better prepared to deregulate it efficiently, and regulate by tariff where it must, if the existing Act's flexibility to evaluate tariff terms and conditions is generally preserved.

S. 2469 provides for use of comprehensive procedures to review facilities requirements and options. I believe the flexibility to tailor the Commission's exercise of its regulatory responsibilities provided by these procedures will be useful in attaining the goals of this Bill. I am also pleased that S. 2469 contains specific authority for the Commission to meet with representatives of foreign telecommunications entities to exchange information. The Commission believes that it has the authority to participate in such meetings under existing law. However, inclusion of specific authority in this Bill may avoid future litigation.

Title II of S. 2469 establishes a Task Force to develop coordinated, comprehensive U.S. international telecommunications and information policies. The creation of a Task Force to coordinate the development of our international telecommunications policy has been under debate for some time.

Clearly, improved coordination of international telecommunications and information policies is necessary. Indeed, it is now one of our primary goals at the Commission. International telecommunications and information are becoming increasingly important elements in foreign commerce and foreign policy. Furthermore, they affect many segments of the economy and society which requires that the various Federal agencies with responsibilities in these areas closely coordinate their policy formulation. While we support the goals and objectives of Title II of the bill, the creation of the Task Force to accomplish the desired coordination may, however, cause delay in policy formulation and implementation.

I will not address the specific provisions of Title II or detail the various disadvantages of the Task Force approach at this time. However, I believe that improved coordination is already taking place. I am referring to the existing interagency group under the chairmanship of the Department of State and the vice-chairmanship of NTIA.

While on this subject let me touch upon a related matter. Section 303 of S. 2469 requires the Department of Commerce to analyze and to quantify the effect of significant Commission rules and orders on international competition and other factors. Ex post facto analysis of Commission decisions is not an efficient method of obtaining the Department's views since the Commission could only consider them through reconsideration of its decision. It would be preferable if the Department of Commerce and the other federal agencies were required to provide the Commission their views prior to the Commission's final decision.

The Bill grants the Commission considerable authority to impose conditions on foreign owned and controlled entities consistent with the restrictions placed on U.S. firms by the foreign entities' home government. It is authorized to impose reciprocal conditions on resale of international telecommunications services by foreign entities. It may deny certification of customer-premises equipment of which more than one-half the value added was manufactured in a country which does not extend equitable market access to U.S. manufacturers of telecommunications equipment. It may also impose reciprocal conditions on the entry of foreign owned and controlled carriers and foreign persons supplying telecommunications or information services or facilities. These provisions in the aggregate considerably broaden the Commission's existing authority. In particular, the authority and responsibility placed with the Commission by Section 624 to impose conditions on foreign suppliers of information services and facilities would expand the Commission's responsibility beyond our traditional common carrier concern.

The approach taken here is what is commonly called "sectoral reciprocity." That is, U.S. trade policies in a particular sector of the international economy are based on a foreign government's treatment of U.S. entities in that sector. I have two concerns with this approach: one procedural and one substantive. First, the FCC has neither the expertise nor the awareness of broader considerations of trade and foreign policy which are necessary to make the threshhold judgments required in this area. It is my sense that a consensus is developing in favor of a general, as opposed to sectoral, approach to reciprocity. Under the general approach the responsibility and authority to determine whether reciprocal restrictions are appropriate should be lodged in the executive branch.

My second concern is that the narrow focus on international telecommunications issues inherent in the sectoral approach may be counter-productive. Evaluating the treatment of U.S. firms by governments with different economic philosophies requires a subtle and difficult judgment. It is made more complex by artificially limiting the scope of the inquiry. Telecommunications plays different roles in different countries and mirror-image policies are not always appropriate. In addition, it is extremely difficult to determine with precision what products and services, ranging from computers to fiber-optic cable to switching equipment, should properly be considered to be part of the "telecommunications" marketplace.

S. 2469 also effects a number of amendments to the Communications Satellite Act of 1962. The Bill would appear to permit Comsat to function more in the fashion of an ordinary corporation than currently. It removes the condition that Comsat must be incorporated in the District of Columbia, abolishes Presidentially appointed and carrier selected positions on Comsat's Board of Directors and repeals the Commission's authority to approve the issuance of stock or the incurring of debt by Comsat. I support their removal.

The Bill also amends the 1962 Satellite Act to: (1) define the terms "authorized user" and "authorized entity" which are used in the Act; (2) make it clear that the Commission has the authority to authorize entities other than international carriers to obtain channels of communications in the INTELSAT system directly from Comsat; and (3) permit the Commission to authorize entities other than Comsat and international carriers to construct and operate U.S. earth stations used to access INTELSAT satellites.

With respect to the first two provisions, the Commission believes that the current provisions of the 1962 Act permit it to authorize non-carrier users to obtain INTELSAT satellite capacity directly from Comsat. Indeed, the Commission came to this conclusion when it first addressed the authorized user question in the mid 1960's. However, as you are aware, this Commission's position has been challeged. For example, the 1978 decision authorizing Comsat to provide television transmission and reception service directly to users was appealed to the courts. Court resolution of that case has been deferred until the Commission issues its report and order in the rulemaking proceeding addressing whether changes should be made to its current "authorized use" policy.

While the Commission continues to believe that it has authority under the existing provisions of the 1962 Act to authorize non-carrier users to acquire INTELSAT capacity directly from Comsat, I believe that much regulatory uncertainty and litigation could be avoided by passage of these two provisions of the Bill

The provision amending Subsection 201(c)(7) of the Communications Satellite Act of 1962 will give the Commission authority it does not now have. Under the existing Act, the Commission is limited to authorizing Comsat, the international carriers, or Comsat and the carriers jointly, to construct and operate U.S. earth stations used to access INTELSAT satellites. The proposed amendment would permit the Commission to also authorize non-carrier users to construct and operate such earth stations where it finds such action to be in the public interest. I would note that the International Martime Satellite Telecommunications Act of 1978 gives the Commission this authority with respect to U.S. earth stations used to access INMARSAT satellite capacity. The Commission also has, and has extensively exercised, the authirity to authorize users to construct and operate earth stations used to access U.S. domestic communications satellites. I believe that giving the Commission like flexibility with respect to U.S. earth stations used to access INTELSAT satellites would aid it in implementing the objectives of S. 2469.

In sum, I endorse the basic thrust of much of S. 2469. We should permit market forces rather than a regulatory body to make as many economic decisions as possible. We, of course, are prepared to work with the Congress in the fine tuning of the legislation.

Thank you very much for the opportunity to express my views.

Senator GOLDWATER. We are going to change the order just a little bit, because General Hilsman, Director of Defense Communications, has another meeting that he must attend. So I will ask Lt. Gen. William Hilsman to take the stand.

General, you may submit your testimony for the record and proceed any way you want. It is good to have you here today.

STATEMENT OF LT. GEN. WILLIAM J. HILSMAN, DIRECTOR, DEFENSE COMMUNICATIONS AGENCY, ACCOMPANIED BY J. RANDOLPH MacPHERSON

General HILSMAN. Thank you, Mr. Chairman. That is what I would like to do, submit my testimony for the record and sort of highlight some important parts of that.

Senator GOLDWATER. That will be done.

General HILSMAN. Thank you for giving us the opportunity to appear before you today.

As you are probably aware, the Department of Defense is the largest single user of leased international telecommunications. We incur annual charges of more than $52 million for just our private line services. As that principal user, we really have two major areas of interest in the bill.

First, our national security and emergency preparedness issues, the survivability issues. Second, the best service at the lowest possible cost, because I also pay all the defense bills, as you probably know, from our offices out in St. Louis.

As I said when I testified before you on S. 898, to a communicator survivability means redundancy very often. We have three ways by which we fulfill our telecommunications requirements outside of the United States, across the oceans, for example. One is our own soldier-operated, sailor-operated, airman-operated defense satellite communication system, the DSCS satellites we have in the sky. We have six of those up there that are our own. We have our own terminals. That is one way.

Second, we also use commercial satellite systems as another way to get there. And third, we use the commercial underwater cable systems. We use that strong media balance, and we need that strong media balance to be sure we can go in different ways if something happens to us in one way.

Another point I would like to make is that we have the same kind of media balance when we arrive in the overseas areas, if you will, outside the United States in the European Continent, for example. We have our own systems there. Over 50 percent of our communications systems in Europe for example are owned, operated, and maintained by soldiers, sailors, airmen, and marines.

At the same time, we make maximum use of the PTT systems as well. So we have that media mix when we are in the overseas area. I would make the point that I know you are aware of, that most of those PTT's are government-owned, so we are not only dealing with a company, we are dealing with a government as well. We acquire those in-country communication systems through different ways: through base rights agreements, through status-of-forces' agreements, and in many cases just like anybody else would. We just go to the PTT and lease circuits.

When the President, for example, was in Europe on this last trip, we needed circuits in different places. We went to the local PTT's and through our ordering agencies that deal with them, we just order up circuits just like you would here.

Senator **Goldwater**. Let me but in. Do you not provide special services for the President?

General **Hilsman**. Surely, we do that as well, but when that group arrives there, we need to put telephones in different places and we use the PTT to do that; but yes, we have our own as well.

Senator **Goldwater**. You also provide them in the United States?

General **Hilsman**. We do in the United States as well. One of the agencies that works for me is the White House Communications Agency. That is a group of some 550 soldiers, sailors, airmen, and marines, again, and they travel with the President and with the Vice President and put those communications systems in for him when he travels wherever he travels.

Senator **Goldwater**. You have a White House ship aloft when he needs to communicate.

General **Hilsman**. We have everything that he needs, yes, sir.

Senator **Goldwater**. He doesn't go secondhand.

General **Hilsman**. No.

Senator **Goldwater**. All right.

General **Hilsman**. Certainly, when we attempt to establish policy, rules, laws, and so forth involving the communications network, and that is what we have to look at, sort of end to end, and it is the network that makes it happen, when parts of those networks belong to other governments, any kind of policy or law, that is very tricky waters. I recognize that. But we believe we can and should pursue the overall goals that are in S. 2469. Let me be very specific about some parts of the bill.

First of all, on national security and emergency preparedness, as I said in S. 898, our domestic bill, we look for three major areas: first of all, pervasive recognition in the law that national security and emergency preparedness is equally as important as anything else we do; second, and specifically in our overseas areas, that we can do joint planning for restoration. If we are using ITT for example in one way and something happens to that, that we can go to RCA and we can bring that up in a different kind of a way.

Third, that we can go end to end. We do not on our private line systems between here and overseas areas, we do not negotiate with three or four different entities, even though we may go through three or four different carrier systems. We go to one. That one sets it up for us. And if something goes wrong, we go back to that one. That is what we call our end to end requirement.

I can tell you, as I did in S. 898, in this bill as well, you have really done a good job in meeting those requirements that we have in those three areas. We have a few small fixes that we will recommend to your staff. I think those can be taken care of very easily.

Let me go to the second issue: resale and shared use. I need to throw up a yellow caution flag, if I can. For the idea of competition, I think that is a neat idea; but in a network sense, since most foreign PTT governments, if you will, are against it, they can hurt us.

Most of the PTT's do not like the idea of us having private line service, because we get it at lesser cost. They are suggesting that if we go into this resale and shared use, they will do away with that private line service for us. That could cause us— and as I say it is a yellow caution flag because we do not know that they will—but it can cause us two major concerns.

No. 1, if they take the private line service away from us and put us on the public network, it is going to cost us more. That is the first issue. The second issue is, we cannot put our secure devices on those public line networks. We cannot get the preemption capability that we have in our Autovon, for example, for somebody like you who needs it quickly. You can push a button and you can preempt. Those are the kinds of problems presented when we get pushed on the public network.

So what we are suggesting is that this resale issue really cannot quite be a unilateral action on our part. As Secretary Wunder said, it has to be a negotiated-between-countries' kind of a thing.

The third issue is the authorized user restriction. Yes, we would like very much to be able to deal with Comsat directly. First of all, it would be less costly, and, Senator, we do have difficulties today in dealing with Comsat directly. For 15 years we have had the problem, but the last pecific years it has had more impact.

We went out 3 years ago on a solicitation to get the best price we could for a system between Guam and Hawaii. Comsat came in the lowest. We went to Comsat. Comsat put the Earth terminals in. I have been to both of those Earth terminals and touched them. We have not been allowed to turn those terminals on the air, and that is a national security issue because we need that system, but we are not able because Comsat cannot get FCC approval to do that. That is the situation we are dealing in today.

Fourth, facilities construction provisions of S. 2469: I would just say, yes, yes, yes, anything you can do to cut out some of the redtape in the facilities authorization and licensing process we ought to do, and we support what you have in there.

The reciprocity issue: It is certainly frustrating, and it is to me, too, to have foreign competitors able to come in here and do things and then we cannot go back. But I sort of stand where the other two speakers stood before. I am a little bit afraid to kind of put that into a regulatory body and have a regulatory body be the one that has to deal with that, because again we are back to the network issue. If they do something to us in a part of the network over there, we can get hurt throughout the network. I would rather see that done some way differently than in a regulatory body.

The last issue I will address is the task force. I think we really do need some kind of a body somewhere to pull all this together. Once again, I think the rules of the way that body would work are important to us. If the body got involved with the very nitty-gritty, as I can read your bill to say, then for example we go daily to PTT's and bring in circuits. If we had to deal with that body to be able to do that daily business, I do not think we would be able to do our daily business very well. So, it does look to me, too, the way it was laid out in the bill, like another bureaucratic body that is being put together, and I would think we would want to take a look at it again.

In summary, we firmly support the legislation. S. 2469 is a large step in the right direction. We are going to submit with your OK a written report detailing our concerns and some recommended amendments.

Thank you again for letting me appear before you, Senator Goldwater.

Senator GOLDWATER. Thank you very much, General. That will be done. Any time you can figure out how to cut redtape out of anything, you let us know.

If this legislation passes, are we likely to see more competition among carriers for emergency services?

General HILSMAN. I would think so. We compete for just about all of our international work today, but I would suspect you will find some more carriers who are looking for the way to come in if this legislation passes—although I am not an expert at that so I may not be the right one to ask that question to.

Senator GOLDWATER. What would be the percentage of your military communications accomplished by landlines as opposed to radio or satellite?

General HILSMAN. In the international arena, I am not sure I can answer that.

Mr. MACPHERSON. Senator, at this point in time we have approximately 200 trunks on the DSCS.

General HILSMAN. That is the satellite system.

Mr. MACPHERSON. That is the military satellite system. We have approximately 290 on the commercial cable systems, and we have approximately 225 on the commercial satellite systems. Years ago we used to live officially by a one-third, one-third, one-third policy you have seen in previous testimony. We do not operate officially by that anymore. We try to maximize survivability and redundancy within each media form, and that does not lead to a strict one-third, one-third, balance between those three types of services.

General HILSMAN. But it is pretty close.

Senator GOLDWATER. Radio is very dependable.

Mr. MACPHERSON. Yes, it is.

General HILSMAN. Satellite systems are certainly very dependable today. You know it yourself when you place an overseas call how it used to be and how it is today. You see it getting better every year.

Senator GOLDWATER. I ran the radio teletype service with the Air Force out of the Pacific, and it is pretty darn good. Do you believe that this bill, if it passes, will enhance our readiness effort? Will it be as reliable and as efficient as in the past?

General HILSMAN. Yes, sir; we support the bill. We think there are a lot of good things in it, and therefore our own readiness would certainly be enhanced as well.

Senator GOLDWATER. You have testified that you can't support the task force provisions of title II in S. 2469, but do you not believe that the United States needs some coordinated effort to insure that our international telecommunications policy goals are properly formulated and implemented?

General HILSMAN. Senator, I believe we need to pull together not only our international but our national goals as well. I do not believe we do that very well as a government today. There are just too many people doing too many different things. The problem that I had with the task force is the way it was written out in this particular area. As I said, if it got into the very nitty-gritty of all the different kinds of things that I could read into it, I do not think that is what it ought to do. I think we do need some pulling together at the national level of telecommunications policy, both national and international, and domestic as well as international. We used to do that, if you remember, when we had an OTP.

Senator GOLDWATER. This could be one of the weak points of deregulation. We find that in the airline deregulation. If you have more people to control or to cooperate, it gets more difficult than when you are only handling a few. I think this is particularly important in your case. It might not be so important in the general citizens' case, but with the military in an emergency I think it is.

Finally, General Hilsman, we appreciate your testimony and your endorsement of some of the major concepts in this bill. To the extent that S. 2469 does not meet your concerns, I hope that you will work with the staff to see that it conforms to your requirements. We all support your goals. We did not intend the task force to get involved in day-to-day regulatory activity, only overall policy formulation, and if there is a tendency for them to hang around, we can get rid of them.

Senator GOLDWATER. Thank you very much, General.

General HILSMAN. Thank you, Senator Goldwater.

[The statement follows:]

STATEMENT OF LT. GEN. WILLIAM J. HILSMAN, DIRECTOR, DEFENSE COMMUNICATIONS AGENCY

Mr. Chairman and Members of the Subcommittee: I want to thank you for providing the Department of Defense this opportunity to address the vital importance of international telecommunications to national defense and security and emergency preparedness, and to express our views of S. 2469, the "International Telecommunications Deregulation Act of 1982" and the "International Telecommunications and Information Coordination Act of 1982." Your efforts to develop specific international telecommunications regulatory reform initiatives, evidenced by S. 2469, are of substantial significance to all users of international telecommunications and information services. The Communications Subcommittee and its expert staff are to be congratulated for recognizing that technological advances, increased international trade in telecommunications and information services and equipment, and the vital importance of international telecommunications to our national defense and security and emergency preparedness require modernization of the laws which govern international telecommunications.

When we at the Defense Department testified before the Commerce Committee last June on S. 898, we noted that one of the responsibilities of the Director of the Defense Communications Agency was to ensure that the Defense Communications System (DCS) is planned, engineered, operated, and managed so as to effectively and economically meet the long-haul, point-to-point telecommunications requirements of the National Command Authorities, the Department of Defense, and other governmental agencies as directed. We also explained the critical role of the domestic telecommunications industry in meeting these DoD telecommunications needs. International telecommunications are equally important to the successful accomplishment of this mission. Indeed, the DoD is the largest single U.S. user of leased international telecommunications services, incurring annual charges of more than $52 million for 519 private line channels alone.

Our S. 898 testimony also noted the responsibility of the Director of the Defense Communications Agency as Manager of the National Communications System (NCS). As we explained last June, the primary mission of the NCS is to ensure that Federal telecommunications resources can be operated to effectively satisfy the most critical telecommunications needs of the Federal Government in any possible emergency situation. We also addressed those Executive Branch initiatives, such as Presidential Directive (PD) 53, which recognized the critical importance of enduring and responsive telecommunications to our Nation's security and survival. We explained that the NCS had the primary responsibility for implementing PD-53, which enumerated national security telecommunications objectives and principles and emphasized those communications necessary to support the strategic forces, conventional forces, intelligence and diplomatic activities, continuity of government, emergency preparedness, and reconstitution of the Nation following enemy attack. PD-53 was thereafter reaffirmed by the Reagan Administration in January 1982, and not only is the Nation's domestic telecommunications industry critical to the implementation of PD-53, but our commercial international telecommunications resources are equally important. Furthermore, not only is DoD's extensive leased and government-owned international telecommunications capability critical to the NCS mission, but the substantial international telecommunications assets of other agencies such as the Department of State and the International Communications Agency, are also important to the success of the NCS.

It is thus clear that those factors which make the domestic telecommunications industry, and the laws governing that industry, vitally and increasingly important to the Department of Defense, are equally applicable to the international telecommunications industry. To fully understand our interest in legislation regarding international telecommunications, however, there are several additional factors which warrant mention because they also affect our ability to accomplish our mission.

First, to provide a portion of our international telecommunications, the Defense Department employs various military satellite systems, such as the Defense Satellite Communications (DSCS). We also operate substantial quantities of U.S. government-owned terrestrial communications equipment in numerous countries throughout the world. Second, we have many "base rights" agreements with several countries regarding our telecommunications operational activities within those countries. These range from memorandums of understanding to more extensive international agreements (e.g., Status of Forces Agreements) and these arrangements are normally negotiated under the auspices of, or through the Department of State. We aslo have arrangements whereby we provide point-to-point or mobile telecommunications services to government entities of other countries (e.g., Canada, United Kingdom, Federal Republic of Germany) or to multilateral international organizations (e.g., NATO). Third, the Defense Department also leases significant amounts of telecommunications services directly from foreign communications entities, which services and entities are not subject to the Communications Act of 1934 or the Communications Satellite Act of 1962 (e.g., communications between US installations wholly within a foreign country, or between installations in separate foreign countries). Finally, while as a large user of international communications services we obviously want to obtain the highest quality service at the lowest possible rates as quickly as we can, we also have another critical requirement, that of ensuring communications secure from interruption by accidental or deliberate action, i.e., survivability.

This requirement for survivability motivates us to distribute our communications among the commercial cable, commercial satellite, and government-owned satellite media so that failure of any one medium (or part thereof) will allow continuation of most of our communications capability. This need for a "mix of media" is the reason for our long-standing strong interest in maintaining the quality and viability of both international cable and satellite systems, and the health of the firms which provide those services. It also leads to our view that it is imperative that both cable and satellite transmission media remain readily available at reasonable rates. Accordingly, we believe it is imperative that the Congress and the Federal Communications Commission continuously exercise care that nothing be done which makes either cable or satellite transmission so expensive or so undesirable that either becomes uneconomical or unavailable.

With the foregoing understanding of the importance of effective international telecommunications to the national defense and security and emergency preparedness missions of the Department of Defense and the National Communications System, and an awareness of the various, and somewhat unique, aspects of our international telecommunications operations, I would now like to address the several aspects of S. 2469 which we believe to be most important.

SPECIFIC NATIONAL SECURITY/EMERGENCY PREPAREDNESS PROVISIONS

In both our testimony on S. 898 and our testimony on H.R. 5158, the comprehensive domestic telecommunications legislation, we repeatedly enumerated the broad areas in which the Defense Department believes legislation is necessary to ensure our Nation's telecommunications industry fully satisfies national defense and security and emergency preparedness requirements. In so doing, we made no distinctions between the domestic and international portions of our telecommunications industry. Thus, we also believe that any international telecommunication legislation must contain provisions providing for:

Pervasive recognition in the statements of findings, purposes or policy that the promotion of national defense and security and emergency preparedness is a goal at least equal to any other.

Legislative safeguards requiring all telecommunications carriers to develop plans and procedures for the protection and restoration of essential telecommunications, and to prepare for the interconnection and interoperation of facilities and services when necessary to meet national defense and security and security and emergency preparedness needs.

Permission for any telecommunications carrier, or separated affiliate/subsidiary, to act free from unwarranted restrictions in providing telecommunications facilities, services, or customer-premises equipment during times of emergency, under whatever industy structure exists.

Measured against these standards, S. 2469 substantially meets our needs. New section 622 is an important and valuable safeguard to ensure the availability of critical national defense and security and emergency preparedness telecommunications. With strengthening of subsection (b) to include private telecommunications systems, the addition of a provision establishing a National Communications System to assist the President in the execution of his responsibilities, and some minor technical amendments, we strongly support enactment of new section 622. New sections 620, 621, and 622 contain provisions which should make it possible for any dominant carrier or its affiliate to promptly provide end-to-end emergency services to the same extent they can today, and thus we also support their enactment. Finally, while new section 601 does establish a purpose of promoting a strong international telecommunications industry responsive to national defense and security needs, we believe such purpose should both add "emergency preparedness" and separately specify "the promotion of the national defense and security and emergency preparedness", in addition to an industry "resonsive" to such needs. Moreover, we believe the findings contained in section 2 of S. 2469 should separately recognize and declare the vital and increasing importance of international telecommunications to national defense and security and emergency preparedness.

In summary, there are several provisions of S. 2469 directly related to national defense and security and emergency preparedness. They substantially meet our needs, and with a few minor amendments (e.g., providing for adequate compensation to carriers) they will fully satisfy our concerns.

RESALE AND SHARED USE

S. 2469 contains a provision (new section 608) which would remove the resale and shared use of any international telecommunications service from the regulatory authority of the Federal Communications Commission (FCC), except in certain limited circumstances.

As you are undoubtedly aware, the FCC has a proceeding pending before it (CC Docket No. 80-176) which is addressing the issues of resale and shared use of international telecommunications service. Since the inception of that proceeding, DoD has been concerned that a unilateral attempt by the FCC to bring about unlimited resale and sharing in the international private line telecommunications service market could have serious adverse repercussions. It has been DoD's view instead, that meaningful bilateral agreements on the resale and sharing of international telecommunications services must be obtained through the avenues available in international forums such as the International Telecommunication Union (ITU).

DoD's concerns with the FCC's activity in this area are two fold: First, without prior bilateral international agreements between the entities involved; providing reasonable assurance that unlimited resale and sharing will not result in the demise of international private line services, there is substantial risk of significant adverse operational impact upon our ability to provide secure international communications for Defense and non-defense users (e.g., limitations upon the use of U.S. secure communications equipment). Second, unilateral FCC action could generate actions by foreign telecommunications entities to remove current "flat-rate" pricing techniques applicable to international private line services, thereby substantially increasing the costs of DoD's voluminous and vital international telecommunications needs.

The Department of Defense thus supports the thrust of this provision of S. 2469. We believe the appropriate forum to address the matter of resale or shared use of international telecommunications services is the ITU, and that *ad hoc* FCC action is not desirable.

AUTHORIZED USER RESTRICTIONS

S. 2469 amends the Communications Satellite Act of 1962 to specifically authorize the FCC to permit users and entities other than carriers to deal directly with the Communications Satellite Corporation whenever the Commission finds it will serve the public interest. We support this clarification of the Commission's legal authority to permit entities other than the international service carriers to deal directly with Comsat. We do not believe, however, that this amendment to the Satellite Act goes far enough.

The Department of Defense has long believed that we are not getting international communications services as cheaply as we could and should. We also believe the July 23, 1966 "Authorized User" decision of the FCC is one factor which tends to inflate the rates we pay, just as we believe that when Congress enacted section 305 of the Satellite Act it intended to permit the United States Government to contract directly with Comsat, rather than only with the "middlemen" international service carriers as required by the FCC. We have thus frequently questioned the FCC's Authorized User decision and have a challenge to it currently pending before the Commission. Furthermore, because of technological advances which now make possible, and financially feasible, the location of earth stations upon U.S. Government premises, and the Government's need for the physical and transmission security features associated with such customer-premises earth stations, in some instances there is no operational necessity for injecting an intermediate carrier between Comsat and the U.S. Government. Finally, while some may feel the FCC is today inclined to permit the U.S. Government to deal directly with Comsat, we at DoD are not so sanguine. For more than 15 years we have sought to deal directly with Comsat and the FCC has not yet permitted us to do so, and, placing the Government's ability to contract with Comsat within the sole discretion of the FCC invites ad hoc determinations and a continuation of the "litigious" process that has existed since 1966.

The Department of Defense thus submits that substantial operating economies could be achieved if we were no longer deprived of the choice of obtaining service directly from Comsat. S. 2469 should also reaffirm, therefore, that the U.S. Government is unrestricted in its ability to deal directly with Comsat, subject, of course, to the Commission's authority to review such direct dealings under the "public interest, convenience and necessity" and "just and reasonable" standards of the 1934 Communications Act, as amended. The legislative history should clarify, however, that this Commission authority would not encompass a determination as to whether it was in the "public interest" for the U.S. Govenment to deal directly with Comsat, but rather would focus upon the traditional factors (e.g., need for, rates, terms and conditions of service) considered in facilities and service authorization and licensing actions.

FACILITIES CONSTRUCTION APPROVAL

A provision of S. 2469 (new section 616) would permit any international telecommunications carrier to construct and operate new transmission facilities upon notification to the Commission, rather than first obtaining construction and operating authority from the FCC. The FCC is authorized, however, to require dominant carriers to obtain prior FCC approval before construction, and to require carriers providing regulated services to obtain prior FCC approval before discontinuing, reducing, or imparing and regulated services.

The Department of Defense supports these efforts to make more orderly and efficient the international telecommunications facility authorization and licensing process. In many of our efforts to obtain international telecommunications service, such as our ongoing actions to implement secure wideband (1.544 Mbps) satellite communications on a global basis, the biggest hurdles we have had to overcome are the extensive regulatory delays and roadblocks associated with carriers' obtaining the necessary FCC authorizations to construct and provide service.

INTERNATIONAL TRADE

Several provisions of S. 2469 address what we at the Defense Department consider to be a very important issue, the relative roles of U.S. and foreign providers of telecommunications and information services and equipment in both domestic and foreign markets (e.g., new sections 608, 623, 624, 303).

As we have repeatedly explained in testifying on S. 898, H.R. 5158, and now on S. 2469, this Nation's domestic and international telecommunications resources are critical to our national defense and security and emergency preparedness. From this perspective, therefore, the maintenance of U.S. technological leadership in telecommunications and related technology, through a technologically advanced and internationally competitive United States telecommunications industry is vital. The Department of Defense beleives that United States should maintain close watch upon the development of foreign entity competition in our telecommunications market and on the export of U.S.-developed telecommunications technology. Moreover, he Department believes that the United States should not become dependent upon foreign telecommunications equipment or service providers and that the competitiveness of U.S. firms with foreign enterprises must be assured.

The Defense Department also recognizes, however, that the routine, inflexible application of reciprocity considerations would be adverse to overall U.S. national interests, and could even jeopardize our current interoperable international communications capability. We are also concerned, moreover, with placing the FCC, a primarily economic regulatory agency, into a role where it acts as an arbiter of the national security ramifications involved in international trade matters.

It is with considerations such as these in mind that the Administration believes that U.S. trade objective should be secured through broader trade legislation, and not through the passage of laws targeting specific industries and lines of commerce for reciprocity consideration. From the Defense Department's perspective, we simply believe that these issues are so important that they warrant Congressional attention in whatever fashion the Administration and Congress deem to be most effective.

INTERNATIONAL TELECOMMUNICATIONS AND INFORMATION TASK FORCE

Title II of S. 2469 establishes in the Executive Branch a task force to be the principle coordinating body for the development of United States Telecommunications and Information Policies. The Secretary of Defense is a member of the task force. The task force is charged, inter alia, with coordinating the policies of all federal agencies involving international telecommunications and information, and with reviewing all significant policy determinations or proposed statements of U.S. policy by such agencies. Most of the provisions of Title II are patterned after H.R. 1957, the "International Communications Reorganization Act of 1981".

The Department of Defense generally supports the goals which prompted the introduction of Title II. As presently written, however, the reorganization contemplated therein would result in serious adverse impact upon our international communications operations.

As I discussed earlier, in leasing or operating the Department's international telecommunications services and facilities, many of the Department's international telecommunications activities are governed by provisions of Status of Forces Agreements. The Department of Defense is also a major user of the telecommunications frequency spectrum throughout the world (using approximately 106,000 frequency allocations internationally) and is heavily involved in the Allied Radio Frequency Agency of the North Atlantic Treaty Organization. Furthermore, the Department of Defense's lease of commercial international telecommunications requires extensive dealings with foreign communications entities, and it is common for the Department to order, pay for, use, and terminate international telecommunications services within relatively short time periods (e.g., 7-30 days).

These Department of Defense activities require almost daily consultation and negotiation, contractual or otherwise, with foreign entities. As I also previously explained, we must frequently negotiate various arrangements with foreign countries to obtain efficient and economical international communications. Moreover, many of these Department of Defense activities are of a "policy" nature, such as our current attempts to seek host nation approvals for the location of satellite each stations accessing INTELSAT upon military installations overseas. As currently written, however, the provisions of section 204 of Title II could prohibit many of these day to day activities of the Department of Defense unless prior approval of the task force was obtained. Furthermore, the task force might also be required to "consult" with the section 207 advisory committee prior to approving any "new statement" of U.S. policy.

It is thus the Defense Department's belief that the task force created by Title II should not be effectively authorized to make, review, or approve the many planning, programmatic and operational decisions affecting our telecommunications systems and operations. That would inject yet another level of organizational review, involving several officials (e.g., FCC Chairman, U.S. Trade Representative) who have no expert knowledge of the effects of their decisions upon the basic operational missions and requirements that the Department of Defense's telecommunications activities must support, into the development and daily operation of mission essential telecommunications services. In our view, the Department's ability to effectively manage and operate its worldwide national defense telecommunications network could only be hampered by such an entity. Under these circumstances, we cannot support enactment of the task force provisions contained in Title II.

CONCLUSION

The Department of Defense firmly believes that legislation updating the laws governing our international telecommunications industry is just as essential as domestic telecommunications legislation. We also believe that S. 2469 is a positive step in the right direction. Indeed, while there are portions of S. 2469 which we believe require revision, we nevertheless strongly encourage the Subcommittee to move forward with legislation based upon S. 2469. As the single, largest U.S. user of international telecommunications, we believe Congressional action is imperative to protect all consumers of such services, and to preserve the national defense and security and emergency preparedness of the Nation.

We will soon submit a detailed written report regarding S. 2469, with specific legislative language for amendments wherever possible. My staff is also available at your convenience to discuss these matters in depth.

Thank you for listening.

Senator **Goldwater**. The next witness will be the Honorable Matthew Scocozza, Deputy Assistant Secretary for Transportation and Telecommunications Affairs, Department of State. Mr. Scocozza, we welcome you, and you may submit your entire testimony for the record, and proceed as you wish.

STATEMENT OF HON. MATTHEW V. SCOCOZZA, DEPUTY ASSISTANT SECRETARY FOR TRANSPORTATION AND TELECOMMUNICATIONS AFFAIRS, DEPARTMENT OF STATE, ACCOMPANIED BY TERESITA CURRIE SCHAFFER, DIRECTOR, OFFICE OF INTERNATIONAL TRADE; AND RICHARD HOWARTH, OFFICE OF INTERNATIONAL COMMUNICATIONS POLICY

Mr. **Scocozza**. Thank you, Senator. With your permission, I would like to summarize my statement and submit a lengthier statement for the record.

Senator **Goldwater**. That will be done.

Mr. **Scocozza**. I am pleased to have the opportunity to give my comments—excuse me. To my left is Mrs. Teresita Schaffer, Office of International Trade; to my right, Richard Howarth, Office of International Telecommunications, Department of State.

I am pleased to have the opportunity this morning to give the comments of the Department on S. 2469, which affects our international political and economic relations.

Section 608 of title I would remove the authority of the Federal Communications Commission to regulate or prohibit the resale or shared use of any international telecommunications service by a foreign entity except to the extent the entity's sponsoring government regulates or prohibits such service. Resale and shared use have proven to be economical services domestically in the United States and have undoubtedly led to more use of existing facilities.

We believe this will also be the case for international services, but we are not persuaded that this section is the best vehicle for achieving such an outcome. As a practical matter, such legislation might result in less favorable circumstances for many U.S. firms. U.S. initiatives in shared use and resale have engendered foreign responses in the direction of either abolishing leased circuits and placing subscribers on public networks or of threatening to impose volume sensitive charging on the use of leased circuits.

Either circumstance would be costly to U.S. users of leased circuits, who would no longer be able to realize a competitive edge from their more efficient use of leased circuits. We fear that enactment of this section would translate foreign threats into reality. Furthermore, we detect no disposition on the part of the Commission to continue regulation of these services except to forestall harmful foreign measures. The Commission's 1980 notice of proposed rulemaking indicates, rather, a reluctance to continue such regulation.

Section 617 provides the statutory basis for the current de facto consultative process whereby the Department, the FCC, and NTIA, in conjunction with U.S. carriers, can meet with foreign telecommunications authorities and plan future facilities on the basis of agreed methodology for traffic forecasting and capitalization. Such a process we believe helps to balance our concerns; namely, a desire to see enough facilities in place to meet growing customer requirements, while avoiding an excessive redundancy of authorized capitalization which would result in unnecessary tariff increases.

The Department was instrumental in instigating this process and welcomes a statutory basis for it. At the same time, we are mindful of our obligation to the Intelsat organization and would hope that the legislative history surrounding this section would reflect a consensus that the process should not delay the Intelsat planning process. The Department would be glad to provide such language if the committee and the staff required it.

Section 622 concerns emergency preparedness and has our total support.

Section 624 seeks to obtain equitable market access and would empower the FCC to adopt rules and policies applicable to the entry of foreign carriers that are comparable with terms and conditions applicable to U.S. carriers in foreign markets.

The effect of such authority would be to close our market to foreign suppliers if they did not offer U.S. suppliers the same rights as they have in the U.S. market. In many instances this would require foreign governments to offer better than most-favored-nation accommodations, and in some cases better than national treatment to U.S. firms. Such a standard is unlikely to achieve the results we wish, and could result in harm to U.S. interests.

We have made major efforts to seek the most open access possible in foreign markets for U.S. exports and investment. We recognize that more remains to be done in improving international rules for trade and investment. Our work in the GATT, the OECD and in bilateral discussions will continue to emphasize the need for fair and equitable market opportunities for U.S. goods and services.

To realize the benefits of international specialization, trade negotiations must cross sectoral lines in order to bring about the overall reciprocity or equity which nations seek in trade relationships.

Mr. Chairman, we are also concerned that the vesting of substantial trade policy authority in independent regulatory agencies, as would be the effect of the legislation on the table today, would make it impossible to formulate and conduct a coherent trade policy. The authority which the bill proposes to give a regulatory agency in my view makes it impossible for the executive branch to negotiate reductions in trade barriers in this sector with foreign governments. The executive as negotiator would not be able to control U.S. policy, creating doubt as to the validity of any negotiations.

Similarly, it is not clear that the United States would be able to keep existing international agreements if the delegation of authority which the bill specifies is made to an independent regulatory agency. Thus we would have a general trade and investment policy coordinated in the executive branch subject to decisions by the President and a telecommunications trade policy conducted by the FCC and not subject to the President.

In summary, Mr. Chairman, I believe that we must work to make certain that our exporters enjoy equitable access to foreign markets. We must make full use of our rights under the GATT, the multilateral trade negotiation codes, and the U.S. law, as we are now doing, for example, in challenging certain agricultural export practices of the European Economic Community and trade-related performance requirements that have been applied in Canada.

Where we find the existing international rules inadequate, we must find ways to improve them, as we will have an opportunity to do during the November GATT ministerial meeting. I believe that this approach, Mr. Chairman, is preferable to the use of sectoral reciprocity as a way of advancing our international trade interests.

Title II seeks to reorganize the machinery of the executive branch for formulating international telecommunications and information policy. Department witnesses have testified about analogous provisions in S. 821 and H.R. 1957. We have opposed such a course on two grounds:

The first is that an adequate coordinating mechanism is in place in the Interagency Group [IG] chaired by the Under Secretary for Security Assistance, Science, and Technology. The Interagency Group is able to mesh the policy inputs not only of the Departments of Commerce and Defense, but also the Federal Communications Commission, the Trade Representative, the Department of the Treasury, the Justice Department, the International Communications Agency, the Agency for International Development, and the Board for International Broadcasting. This Interagency Group has met as required and has approved concerted policies designed to improve our international position in telecommunications.

The second ground for our opposition is that, while trade concerns are an important component of international communications and information policy, they remain a component; they are not the whole. Our efforts in UNESCO to avoid international regimes inimical to our first-amendment rights reflect a concern with principles which should not be confused with trade issues.

Similarly, the ongoing effort to develop international technical standards to facilitate the operation of international networks and foster the exchange of information grows out of American values which are not only routed in commercial factors. We believe that coordinating authority should remain with the Department which addresses a broad range of issues and interests as part of its day-to-day mission.

The advancement of our telecommunications and information interests requires concerted actions on a variety of fronts. A reversal on any one of these could prove serious.

Mr. Chairman, I am not even reading right.

Section 207, dealing with the advisory committee, introduces the novel concept that the Government is answerable to the advisory committee in that it must explain in writing in the event it has not accepted the advice tendered by the committee. The Federal Advisory Committee Act specifies that only in exceptional circumstances shall such a committee have functions other than advisory functions. The concept of answerability may confuse the functions of advice and policy formulation.

Section 306 concerns the accreditation of private sector representatives to international telecommunication conferences. We support the thrust of the section and, in fact, current practice is to draw extensively upon the private sector for its expertise in meetings of the CCITT or the OECD.

We prefer the more narrowly drawn language that has appeared in other legislative proposals, including the fiscal year 1982–83 appropriations bill for the Department. As a practical matter, we would adhere to the provisions of the State Department guidelines for private sector participation in delegations, which permit private sector representatives to speak and clarify technical questions, but reserve the enunciation of U.S. policy to government officials.

To summarize, S. 2469 contains provisions which have our wholehearted support. Others are troubling to us as they are currently drafted. Other officials of the Department and I would be happy to consult with members and staff of the subcommittee to try to find mutually acceptable language. The goal of deregulation is a commendable one in telecommunications and I, for one, would not wish to see minor disagreements between the State Department and this committee stand in its way.

Thank you, Mr. Chairman.

Senator GOLDWATER. Thank you.

I think you brought out some important points, and particularly relative to secton 608, and I hope you will make yourself available to the staff to help get that as clear as we can. You know, we are talking about services here, not about something like wheat, or corn, or something else that you can handle. Services in my opinion present a rather difficult problem.

You have testified that the concept of resale and shared use has worked domestically and that there are other vehicles available to the United States for making its views known on this issue. Do you think it is inappropriate at any time for Congress to state its policy on resale and shared use? After all, we have no authority over other sovereign nations.

Mr. SCOCOZZA. Mr. Chairman, I do not think there is any problem at all with stating our policy. I think that has been made very clear in a lot of our negotiations with our foreign neighbors and in the process of our international conferences.

It is actually putting it into a statute which creates a problem for us. The perception may be that the United States may in fact be tolerant of an alternate to the concept in this particular proposal. On this particular point, I would like to have Mr. Howarth be more responsive to you, because he has dealt with several of these negotiations and would be better able to give you a closer insight.

Mr. HOWARTH. Thank you, Mr. Chairman. We have, of course, been dealing with the question of shared use and resale in the CCITT, and every time this has come up the United States has insisted that it is a matter of continued study within the CCITT.

I believe, in the long run, the PTT's of this world are not going to change their ways on their own. I think the United States has to talk more and more with the trade ministries, the economic ministries, in these other countries and point out how the shared benefit of resale would help their own national business community.

We see steps going on in this direction in Japan. It is hopeful for us and it is surprising, given the traditional policies followed by KDD and NTT.

Thank you, sir.

Senator GOLDWATER. I have a hunch what the answer will be, because I am thinking of the ease of making your job more possible to get done. Do you think that the job level should be upgraded to ambassadorial rank to help you?

Mr. SCOCOZZA. Mr. Chairman, I am a little at a loss for an answer to that particular question. I would like to reserve the right to submit an answer for the record.

Senator **Goldwater**. I understand, and I did not want to embarrass you.

You have stated that the U.S. initiatives in resale and shared use have led to an abolition of leased circuits or volume sensitive pricing on leased circuits. Have you actual examples of these retaliatory measures?

Mr. **Howarth**. Thank you, Mr. Chairman.

The Commission decision on domestic shared use and resale came out, I believe, in early 1976. In the fall of 1976, the CCITT had its plenary assembly where this was mentioned. Our delegation put a footnote into the plenary documents pointing out that this is a subject of continued study in the United States.

When the next plenary period began, the seventh contribution made to study group III, which handles international tariffs, was from Italy on behalf of CEPT. It was a proposal to switch to volume sensitive charging for private leased lines. The uproar in the U.S. user community I think can still be heard today. We did manage to head that off before the 1980 plenary, however.

Thank you.

Senator **Goldwater**. We have some records of that. We might check with you to see if you have more up to date records.

Mr. **Scocozza**. Mr. Chairman, that really is the heart of our concern here, that anything that is done in the form of a statute might create a signal that the United States might tolerate volume sensitive charging, which is something that we violently oppose.

Senator **Goldwater**. Well, we all have to make a change once in a while.

Mr. **Scocozza**. For sure.

Senator **Goldwater**. You have alluded to trade negotiations where some of these issues are more appropriately addressed. What efforts are being made to expand the Government procurement code to include telecommunications goods and services?

Mr. **Scocozza**. I would like to ask Mrs. Schaffer to respond to that.

Mrs. **Schaffer**. Mr. Chairman, the Government procurement code is scheduled for review next year. We have been trying to move the date for that review up, and improved coverage of telecommunications equipment is certainly one of our objectives in that. This is, of course, in the GATT context.

Senator **Goldwater**. I wish you would keep us posted on that. It will probably happen after we get action on the bill, but it is good to have the whole picture.

Mrs. **Schaffer**. I will do that, Senator.

Senator **Goldwater**. Well, we thank you all for being here.

Mr. **Scocozza**. Thank you, Mr. Chairman. It was nice coming home.

[The statement follows:]

STATEMENT OF MATTHEW V. SCOCOZZA, DEPUTY ASSISTANT SECRETARY FOR TRANSPORTATION AND TELECOMMUNICATIONS, DEPARTMENT OF STATE

Mr. Chairman: My name is Matthew V. Scocozza. I am Deputy Assistant Secretary of State for Transportation and Telecommunications. I am pleased to have this opportunity to give the comments of the Department on the provisions of S. 2469 which affect our international political and economic relations.

Section 608 of Title I would remove the authority of the Federal Communications Commission (FCC) to regulate or prohibit the resale or shared use of any international telecommunications service by a foreign entity except to the extent that the entity's sponsoring government regulates or prohibits such service. Resale and shared use have proved to be economical services, domestically, in the United States and have undoubtedly led to more efficient use of existing facilities. We believe that this would also be the case for international services, but we are not persuaded that this Section is the best vehicle for achieving such an outcome. As a practical matter, such legislation might result in less favorable commercial circumstances for many U.S. firms.

The international provisions of private leased circuits is governed in most instances, by the CCITT (International Telegraph and Telephone Consultative Committee) D Series of recommendations which prohibit resale. The U.S. has consistently maintained that the D Series is under continued study but it has not, so far, obtained an international consensus for removing this prohibition. On the contrary, U.S. initiatives in shared use and resale have engendered foreign responses in the direction of either abolishing leased circuits and placing subscribers on public networks or of threatening to impose volume sensitive charging on the use of leased circuits. Either circumstance would be costly to U.S. users of leased circuits who would no longer be able to realize a competitive edge from their more efficient use of leased circuits. We fear that enactment of this Section would translate foreign threats into reality. Furthermore, we detect no disposition on the part of the Commission to continue regulation of these services except to forestall harmful foreign measures. The Commission's 1980 Notice of Proposed Rulemaking indicates, rather, a reluctance to continue such regulation.

Section 617 provides a statutory basis for the current *de facto* consultative process whereby the Department, the FCC, and NTIA, in conjunction with U.S. carriers can meet with foreign telecommunications authorities and plan future facilities on the basis of agreed methodology for traffic forecasting and capitalization. Such a process, we believe, helps to balance our concerns: namely, a desire to see enough facilities in place to meet growing customer requirements, while avoiding an excessive redundancy of authorized capitalization which would result in unnecessary tariff increases. The Department was instrumental in instigating this process and welcomes a statutory basis for it; at the same time, we are mindful of our obligation to the INTELSAT Organization and would hope that the legislative history surrounding this Section would reflect a consensus that the process should not delay the INTELSAT planning process.

Section 622 concerns emergency preparedness and has our full support. We have gone on record with respect to analogous provisions of S. 898. Deregulation will unleash the creative and innovative forces which are very apparent in the U.S. telecommunications industry, but the decentralizing effect of deregulation makes it more necessary than ever to provide the President with the tools for meeting a national emergency.

Section 624 seeks to obtain equitable market access and would empower the FCC to adopt rules and policies applicable to the entry of foreign carriers that are comparable with terms and conditions applicable to U.S. carriers in foreign markets.

The effect of such authority would be to close our market to foreign suppliers if they did not offer U.S. suppliers the same rights as they have in U.S. markets. In many instances, this would require foreign governments to offer better than MTN and in some cases better than national treatment to U.S. firms. Such a standard is unlikely to achieve the results we wish and could result in harm to U.S. interests.

We have made major efforts to seek the most open access possible in foreign markets for U.S. exports and investment. We recognized that more remains to be done in improving international rules for trade and investment. Our work in the GATT, the OECD and in bilateral discussions will continue to emphasize the need for fair and equitable market opportunities for U.S. goods and services.

In our view, a strengthening of the present international system offers better prospects for improving our access to foreign markets than the adoption of the sectoral reciprocity concept contained in this legislation. There may be instances in which sector reciprocity is a useful tool. However, if we were required to use sectoral reciprocity as our guiding principle in international trade and investment and nations aimed at balancing benefits reciprocally on a sectoral basis, we believe the result would be to restrict trade rather than expand it. For countries to adopt varieties of differential treatment depending on the source of the imports and investments would have a chilling effect on the international flow of goods and services. Countries which enjoy a legitimate competitive advantage in a particular sector, as the United States does, for example, in telecommunications, civil aircraft, and agriculture would not be allowed to capitalzie on this advantage. Instead of concentrating our negotiating leverage on these sectors, we would be pushed to concentrate on areas where barriers might be stronger and our trade and investment potentiality weaker.

To realize the benefits of internation specialization, trade negotiations must cross sectoral lines in order to bring about the overall reciprocity, or equity, which nations seek in trade relationships. Likewise, if we want to improve access for a sector in which we enjoy a competitive advantage, e.g., telecommunications, in a market that has little or no capability in the same sector, the erection of barriers in this sector by the U.S. will not improve our prospects for better market access.

We are also concerned, Mr. Chairman, that the vesting of substantial trade policy authority in independent regulatory agencies, as would be the effect of S. 2469, would make it impossible to formulate and conduct a coherent trade policy. The authority which the bill proposes to give a regulatory agency would also, in my view, make it impossible for the Executive Branch to negotiate reductions in trade barriers in this sector with foreign governments. The Executive, as negotiator, would not be able to control U.S. policy, creating doubt on the validity of any negotiation. Similarly, it is not clear that the U.S. would be able to keep existing international agreements if the delegation of authority which the bill specifies is made to an independent regulatory agency. We would thus have a general trade and investment policy coordinated in the Executive Branch and subject to decisions by the President and a telecommunications trade policy conducted by the FCC and not subject to the President.

Finally, Mr. Chairman, I am convinced that if a sectoral approach to reciprocity is taken by the United States, it will shortly be adopted by our trading partners, many of whom are now facing strong domestic pressures to limit imports. Thus, although conceived as a method of opening markets to our exports and investments, in the end this policy would be used against us, to restrict our access to markets abroad in sectors in which we enjoy an advantage. The consequences for U.S. agriculture, for example, or for computer-related industries, could be disastrous from our point of view.

In summary, Mr. Chairman, I agree that we must work to make certain that our exporters enjoy equitable access to foreign markets. We must make full use of our rights under the GATT, the MTN codes, and U.S. law, as we are now doing, for example, in challenging certain agricultural export practices of the European Economic Community, and trade-related performance requirements that have been applied in Canada. Where we find the existing international rules inadequate, we must find ways to improve them, as we will have an opportunity to do during the November GATT Ministerial meeting. I believe that this approach, Mr. Chairman, is preferable to the use of sectoral reciprocity as a way of advancing our international trade interests.

Title II seeks to reorganize the machinery of the Executive Branch for formulating international telecommunications and information policy. Department witnesses have testified about analogous provisions in S. 821 and H.R. 1957. We have opposed such a course on two grounds. The first is that an adequate coordinating mechanism is in place in the Interagency Group (IG) chaired by the Under Secretary for Security Assistance, Science and Technology. The IG is able to mesh the policy inputs not only of the Departments of Commerce and Defense, the FCC and the U.S. Trade Representative, but also of Treasury, Justice, the International Communication Agency, the Agency for International Development, and the Board for International Broadcasting. The IG has met as required and has approved concerted policies designed to improve our international position in telecommunications. The second ground for opposition is that while trade concerns are an important component of international communications and information policy, they remain a component, i.e., they are not the whole.

Our efforts in UNESCO to avoid international regimes inimical to our First Amendment rights reflect a concern with principles which should not be confused with trade issues. Similarly, the ongoing effort to develop international technical standards to facilitate the operation of international networks and foster the exchange of information grows out of American values which are not only rooted in commercial factors. We believe that coordinating authority should remain with a Department which addresses a broad range of issues and interests as part of its day-to-day mission. The advancement of our telecommunications and information interests requires concerted actions on a variety of fronts. A reversal on any one of these could prove serious.

The Section (207) dealing with the Advisory Committee introduces the novel concept that the Government is answerable to the Advisory Committee in that it must explain in writing in the event it has not accepted the advice tendered by the Committee. The Federal Advisory Committee Act (P.L. 92-463) specifies that only in exceptional circumstances shall such a committee have other than advisory functions. The concept of answerability would confuse the functions of advice and policy formulation. The point is that we have in place a series of advisory committees which provide sound technical and economic advice to Executive agencies. We have found such advice extremely useful in arriving at positions for international meetings and for general policy formulation. This appears to us to be something that is not broken and does not require fixing.

Section 306 concerns the accreditation of private sector representatives to international teclecommunications conferences. We support the thrust of the Section and in fact, current practice is to draw extensively upon the private sector for its expertise in meetings of the CCIR, the CCITT, WARC's and the OECD We prefer the more narrowly drawn language that has appeared in other legislative proposals, including the fiscal year 1982-83 Appropriations Bill for the Department. As a practical mater, we woud adhere to the provisions of the State Department Guidelines for Private Sector Participation in Delegations which permit private sector representative to speak and clarify technical questions, but reserves the enunciation of U.S. policy to Government officials.

To sum up, S. 2467 contains some provisions which have our wholehearted support. Others are troubling to us as currently drafted. I and other officials of the Department would be happy to consult with members and staff of this Subcommittee to try to find mutually acceptable language, The goal of deregulation is a commendable one in telecommunications and I, for one, would not wish to see minor disagreements between our two branches stand in its own way.

Senator **Goldwater**. Our next witness is Mr. Geza Feketekuty, Assistant U.S. Trade Representative for Service and Policy Development, Office of the U.S. Trade Representative. You are welcome and you may submit your complete testimony for the record and proceed as you wish.

STATEMENT OF GEZA FEKETEKUTY, ASSISTANT U.S. TRADE REPRESENTATIVE FOR SERVICE AND POLICY DEVELOPMENT, ACCOMPANIED BY RICHARD SELF AND NANCY ADAMS

Mr. **Feketekuty**. Senator, I have two of my coworkers with me. On my left is Mr. Richard Self, who is my Deputy and who has been working closely with Senator Danforth's staff in legislation; and to my right is Ms. Nancy Adams, who is responsible for telecommunications issues in our office.

As you suggested, Mr. Chairman, I would like to submit my written testimony for the record and summarize my comments.

Senator **Goldwater**. That will be done.

Mr. **Feketekuty**. I am pleased to be here and to discuss the important issue of how the United States can best further its international interests in the communications area. I therefore would like to concentrate my testimony on sections 608 and 624 of S. 2469.

As you know, Mr. Chairman, the administration strongly supports deregulation of the telecommunications industry. The administration also recognizes that deregulation can make it more difficult to achieve equitable treatment for U.S. telecommunications companies internationally, particularly in countries where telecommunications is a government monopoly.

The administration also fully accepts the need for new arrangements and measures designed to achieve equitable treatment for the U.S. telecommunications companies abroad. The issue we must address is how this can best be accomplished.

Mr. Chairman, the issue of providing equitable treatment for U.S. service industries arises not only in telecommunications but in other service industries and particularly other service industries that are also going through the process of deregulation. We have had an extensive discussion of this issue in the administration and with the Congress and the private sector.

Out of those discussions there has emerged a rough outline of the administration position on the issue of reciprocal treatment of U.S. services and goods in international commerce. This position has been described by Ambassador Brock, Secretary Baldridge, and other members of the Cabinet, as well as previous speakers today.

I welcome this opportunity to discuss the administration's thinking on this matter and to join with you in working toward the best possible approach for the United States.

The administration supports the policy objective of seeking equitable treatment of U.S. telecommunications companies abroad and the reduction of foreign barriers. I note in this respect that you emphasized this point in your statement introducing S. 2469.

The administration also supports the overall concept of reciprocity, on which all of the U.S. trade legislation from the 1930's has been built. This concept of reciprocity, also provides the basic foundation of the GATT, which codifies international trade rules. We believe the issue of reciprocity ought to be addressed on a unified basis for all services across the board.

We also believe the President should have the responsibility for managing and administering issues regarding our commercial relationships with other governments. At the same time, Mr. Chairman, the administration is opposed to certain approaches. It is opposed to legislation that would establish strictly sectoral and bilateral reciprocity. It is opposed to scattering responsibility for enforcing reciprocity among a large number of regulatory agencies whose primary function is domestic regulation in any case.

Within these parameters, the administration is willing to explore with Congress the best approach for the United States. We have had an extensive dialog with Senator Danforth with respect to legislation he has introduced on reciprocity. The suggestion the administration has made with respect to that legislation is that we build on section 301 of the 1974 Trade Act, which as you know, Senator, authorizes the President to retaliate against unfair foreign trade practices.

New legislation is need to make it clear that section 301 gives the President the authority to take actions necessary to insure reciprocal treatment of our service companies.

In summary, we support the general objective of your legislation, although we have some concerns on how that can best be accomplished. I want to applaud your work on S. 2469 and the excellent statement you made on May 3, 1982, in introducing your draft legislation. We look forward to working with your staff in developing this legislation further.

Thank you, Senator.

Senator **GOLDWATER**. Thank you very much. And I know the staff will look forward to your help.

You mentioned the efforts of the Senate Finance Committee on the Danforth trade bill. How would that bill strengthen the President's authority beyond that already contained in section 301?

Mr. **Feketekuty**. It would make clear, Senator, that the President has authority to restrict imports into the United States or to impose fees or to take whatever other action may be necessary and desirable to achieve reciprocal treatment, even in areas where regulatory agencies have some jurisdiction.

Senator, it may well have been the intention of Congress that the President have this authority under section 301, but lawyers have raised all kinds of issues after passage of that legislation. The argument has been made that the President did not have any independent authority to restrict imports into the United States where regulatory agencies have been given authority to regulate services.

Another argument was made that the President had only such authority to restrict imports of services as was delegated to him in other legislation, and that the section 301 language in itself did not create such authority. What we would do is clarify the meaning of section 301 to make it clear that those reservations do not hold, that in fact Congress meant to delegate to the President full authority to take retaliatory action.

Senator **Goldwater**. Thank you.

Getting back to the bill, what is the status of that bill? Have the administration and the Danforth committee reached some accord?

Mr. **Feketekuty**. We are very close to an understanding, Senator, and I would hope that in the near future some time there would be some new announcements. I understand the bill is going to markup tomorrow and the administration will be taking a position at that time.

Senator **Goldwater**. It is becoming more and more an issue. I do not necessarily agree 100 percent, but I think it has reached a stage where something has to be done.

In your negotiations on the trade bill, did you consider the S. 2469 model? If so, why was it put aside?

Mr. **Feketekuty**. There are a number of reasons, Senator why we did not adopt the S. 2469 model. One is the concern about a sectoral approach. The feeling is that a sectoral approach is unduly limiting. On the one hand, it unduly limits considerations that ought to go into a full evaluation of possible action by the United States. On the other hand, it unduly limits the kind of actions the President might take, because in some cases the most effective action might well be outside the telecommunications area.

So, we are concerned about the range of inputs into any reciprocity decision; and second, with respect to the range of possible measures that might be considered for the achievement of reciprocity.

The administration is also concerned about scattering responsibility for the management of trade policy among a variety of agencies. There is a very strong need to have a unified U.S. trade policy. I know that you are very concerned about effective policy coordination and you address the problem of coordination in the telecommunications area. In your bill I think the same issue of coordination arises with respect to U.S. commercial policy overall. So I want to be sure that we do not have several independent trade policies.

The other issue is, how do we begin sorting out what is a regulatory issue and what is an international trade issue. I think in the past we have really glossed over this. I think it is time we began thinking about which is which.

Senator **Goldwater**. I agree with you. Has the existence of sectoral reciprocity legislation hurt or strengthened the U.S. trade negotiations?

Mr. **Feketekuty**. Senator, it has given a very clear signal that the U.S. public and the U.S. Congress is quite concerned and frustrated over a number of issues in this area. I think it certainly has helped expedite consideration of these issues within the administration. It has also sent a signal to our U.S. trading partners, and I think it has been productive from that point of view.

Senator **Goldwater**. I think in the future we are going to see more and more need. As we look back, 20 years ago we did not have to worry. Today, almost every field of endeavor we are in, we are getting increased foreign competition, not just in price but in quality.

In what forums and pursuant to what arrangements are you negotiating to include telecommunications goods and services within the ambit of the Government procurement code, and what is the status of those negotiations?

Mr. **Feketekuty**. We are pursuing these issues both bilaterally as well as multilaterally. Bilaterally, we have had extensive discussions with Japan which led to an interim agreement on these issues. Subsequent to the agreement with Japan, we have been discussing this issue bilaterally with a number of countries.

At the same time, we have been preparing for a new set of discussions in the GATT in the context of the Government procurement code. As previous witnesses have indicated to you we assign an extremely high priority objective to the extension of the Government procurement code to telecommunications and other areas that were excluded.

Senator **Goldwater**. What methods have been adopted to assess the success of the implementation of the Japan agreement?

Mr. **Feketekuty**. Senator, we have a very close monitoring system. So far, it is still too early to make a balanced judgment, but we clearly are watching things very closely and have repeatedly been pointing out to the Japanese Government that the credibility of that agreement depends upon the results.

Senator **Goldwater**. You stated that the United States has put its other trading partners on notice as to our desire to expand the Government procurement code. What form has this notice taken and what has been the reaction?

Mr. **Feketekuty**. We have communicated this in bilateral discussions with foreign governments. I think at this point our trading partners are taking a noncommittal attitude. They clearly understand and accept the fact that this will be discussed and negotiated over the next few years in the GATT.

So, at this point they have not made any commitments, but they clearly accept the fact that we will have such discussions and such negotiations.

Senator **Goldwater**. Is the USTR acting with the Presidential council to formulate some coordinated policy?

Mr. **Feketekuty**. Yes, sir, the trade policy committee process is extremely active and I think that we have a fairly good record in developing a consensus within the administration on trade policy issues.

Senator GOLDWATER. I want to thank you for being here and your assistance. It is a pleasure having you. You have given us some very clear testimony and we thank you.

Mr. FEKETEKUTY. Thank you, Senator.

[The statement follows:]

STATEMENT OF GEZA FEKETEKUTY, ASSISTANT U.S. TRADE REPRESENTATIVE FOR POLICY DEVELOPMENT AND SERVICES

Mr. Chairman: I am pleased to appear before this Committee today to express our views on several provisions of S. 2469.

The issues addressed in S. 2469 are of vital importance to our economy. The telecommunications sector is one of our highest current and potential growth areas, both domestically and internationally. It deserves our priority attention. I commend the Committee for your leadership in raising the issues of deregulation of our domestic telecommunications sector, and issues related to our international activity such as equitable market access and the organization of the U.S. Government to coordinate international policy issues.

Today I would like to address my remarks primarily to several key aspects of S. 2469. First, let me briefly mention our views on the deregulatory aspects of the bill.

Mr. Chairman, the Administration, as you know, strongly supports deregulation of the U.S. telecommunications market. The decision to deregulate the U.S. market is based upon the belief that significant economic benefits can be achieved through aggressive, open competition. From an economic and trade perspective, we wholeheartedly support the goal of increasing competition in the U.S. market and your efforts to assure an orderly transition to a new market structure. Deregulation, however, does raise some fundamental questions concerning how to best defend U.S. commercial interests in foreign government controlled telecommunications markets when our own market is open.

S. 2469 addresses this question in "equitable market access" provisions of the bill, specifically Sections 624 and 608. I agree that we must seek more effective ways of protecting our international commercial interests. For too long we have focused primarily on our domestic market and given short shrift to out international interests. I believe that the President needs stronger provisions to deal with international issues and protect U.S. commercial interests abroad.

In general, the concept of reciprocity is fundamental to the rules of trade as established in the GATT Agreement in 1947. In the GATT context, reciprocity has come to mean that, in the process of multilateral negotiations, govenments will seek to negotiate a balanced set of commitments among countries. Every U.S. trade law and trade agreement since 1934 has been based on this concept. We have developed over this period of time a set of agreements that reflect hard, concrete judgments about what constitutes a balanced set of concessions in goods trade. Trade in services has, to date, been excluded from these international trade discussions. However, we are currently undertaking a serious effort to establish a set of international agreements for services trade based, in part, on the fundamental principle of reciprocity.

In order to assure effective implementation of our rights and of the agreements we have negotiated, Congress established Section 301 of the Trade Act of 1974. This section authorizes the President to retaliate against unfair trade practices and resolve problems in the area of market access.

As you are aware, in the last few months we have been working closely with Senator Danforth and the Trade Subcommittee of the Senate Finance Committee. Our purpose is to work together to draft a bill which would strengthen U.S. trade laws and provide stronger tools to resolve trade problems encountered by U.S. firms seeking equitable access to foreign markets. One of the key aspects of this bill would be a strengthening of the President's authority under Section 301. In addition, it would provide an important political mandate that the President undertake international negotiations in areas heretofore not addressed in multilateral trade negotiations. These are the "emerging" issues of trade in services, high technology and investment.

The problem with some of the ideas under consideration in the Congress is that the concept of reciprocity would be used as a trade weapon out of context with its true meaning. For example, there have been proposals that the U.S. have the authority to retaliate against imports solely because our products are denied access to a foreign market. To retaliate on such a narrow basis could have a detrimental effect on U.S. manufacturers and on the economy in general. It is important that an assessment be made as to the detrimental effect on the U.S. industry caused by the imported goods and services from countries who fail to reciprocate in trade.

Another problem occurs in propsoals that require retaliation in specific product sectors where foreign markets are closed. In the case of goods trade, it is very likely to contravene our GATT obligations and force us to pay compensation to our trading partners because we have upset the balance of rights and concessions obtained in trade negotiations. These negotations have established a theoretical equivalency when it comes to reciprocal market access, and we would lose expert opportunities in other product sectors if forced to retaliate against one item.

I can assure you that the Administration shares your concern that foreign government monoplies in the telecommunications sector make it extremely difficult for American firms to achieve the degree of market access to which our firms are entitled. However, in our view, a policy of "sectoral reciprocity" such as is outlined in S. 2469 is not in our national interest and is not a useful tool for opening foreign markets. We therefore oppose these provisions of your bill.

This Administration is committed to enforcing all our domestic and international trade laws and agreements. It is our intention to continue our efforts to resolve market access problems. This is particularly true in the telecommunications sector where we must be more aggressive in asserting our rights abroad to be able to take full advantage of the dynamism and strength of our industry.

In the last year we have taken a number of other steps to establish international discipline in the area of trade in high technology goods and services. We are actively working to expand the coverage of the Government Procurement Code to cover telecommunications goods and services—particularly to include purchases of other countries' state-run telephone companies, known generally as PTTs. We negotiated such coverage with the Japanese several years ago. The Agreement has not been in effect for us to see significant results and fully evaluate its effectiveness in increasing sales. However, we feel that it represents a significant first step in an uphill battle to open telecommunications procurement markets. We have put our other trading partners on notice that one of our top priorities in the next few years will be expansion of scope of the Government Procurement Code in this area.

Second, we are pressing to expand international agreement on issues related to interconnect standards in the telecommunications/computer area. Finally, we have asked for consideration of the special trade problems of high technology industries and trade in services in the upcoming Ministerial level meeting of the GATT. We fully expect that both of these issues will be on the GATT Ministerial agenda.

There is another issue which I would like to address today. That is the question of organization within the U.S. Government to address international telecommunications policy questions—more specifically Section 203 of this bill. We share the Committee's interest in making sure that the Government is in a position to carry out a well coordianted policy in the intenational telecommunications field. This sector involves issues of extreme complexity which are quite diverse in nature—ranging from issues of satellite spectrum management, international telecommunications standards, national security and international trade in goods and services.

We agree that the organizational structure of the Government in this are could be improved to some extent. This remains an issue for both the Congress and the Administration address. There are a number of ways that better coordination and cooperation could be achieved—any nmber of bodies or agencies could logically coordinate these diverse activities. The Administration has been examining several options for organization—including retaining and improving the current structure.

In the last year we have made significant strides in improving interagency cooperation and coordination in this field. Our working relations are good and we have made progress in a number of areas, such as in the field of transborder data flow. At the same time, we feel that the importance of this subject deserves higher visibility and attention in our governmental structure. We will continue to work within the Administration to develop an effective process for high level coordination.

Mr. Chairman, I want to reiterate our concerns about the international problems being faced in this dynamic sector. We share your view that the sector deserves our full attention. We must all work together to assure that our policies in this area are well thought out and coordinated, and that our industry achieves the degree of market access to which it is legitimately entitled.

Senator **Goldwater**. That will conclude the hearings today. There will be further hearings commencing at 9 a.m. tomorrow.

[Whereupon, at 10:45 a.m., the subcommittee was adjourned.]

INTERNATIONAL TELECOMMUNICATIONS DEREGULATION ACT OF 1982

TUESDAY, JUNE 15, 1982

U.S. Senate,
Committee on Commerce, Science, and Transportation,
Subcommittee on Communications,
Washington, D.C.

The committee met, pursuant to notice, at 9 a.m., in room 235, Russell Senate Office Building, Hon. Barry Goldwater (chairman of the subcommittee) presiding.

OPENING STATEMENT BY SENATOR GOLDWATER

Senator **Goldwater**. The hearing will come to order.

This morning we resume hearings on S. 2469, the International Telecommunications Deregulation Act of 1982. Yesterday we heard from Government witnesses and examined the overall policy objectives of this legislation. Today we will hear from carriers, those entities actually involved in the business of providing international telecommunications services.

In reviewing the testimony, I am more than a little perplexed by some of the positions taken by these carriers. I remember when we began the process of opening the international record market to Western Union, the IRC's testified before this committee it would spell disaster for that market. In fact, a hard-fought jurisdictional battle with the Senate Judiciary Committee was engendered by such legislation.

Today's testimony cites the legislation, S. 271, passed late last year over their objections, as model legislation. I am told that there have been further attempts to thwart the implementation process of that bill by the filing of interconnection tariffs so deficient that two FCC Commissioners, including the Chairman, just last week were moved to talk of punitive action.

I hope that as this legislation progresses, we will see a more positive and cooperative effort to make and implement good law. That is really all we are after. We want a good law and we have good laws when all sides pitch in and help, and we do not have one side shooting at the other.

So, let us proceed that way. Dr. Charyk, it is a pleasure to have you with us. You may proceed as you care to.

STATEMENT OF DR. JOSEPH V. CHARYK, PRESIDENT AND CHIEF EXECUTIVE OFFICER, COMMUNICATIONS SATELLITE CORP.

Dr. **Charyk**. Thank you, Mr. Chairman. With your permission, I will submit the detailed statement for the record and make a brief summary.

I am Joseph Charyk, president and chief executive officer of the Communications Satellite Corp. I am pleased to have this opportunity to present Comsat's views regarding S. 2469, the International Telecommunications Deregulation Act of 1982.

As you know, Comsat has had a long history of involvement in international telecommunications, beginning with our 1962 legislative mandate to establish a global commercial communication satellite system. The International Telecommunications Satellite Organization, Intelsat, which was created as a result of Comsat's pursuit of this mandate, has proved to be an outstanding technical and economic success.

The national importance of communications and the significant advances occurring in technology and services make it appropriate that the Congress consider international communications policy. Whether or not comprehensive legislation is determined to be necessary, this review should provide valuable information on where we are now and where we may want to be in the future. Ultimately, the goal of all involved, both in the Government and in the private sector, should be the provision of maximum communications services at a reasonable cost to users, while advancing U.S. interests at home and abroad.

The basic purpose of S. 2469 is to increase competition and to decrease the need for regulation in international telecommunications. While we support this objective, we believe it is important to distinguish between the provision of international communication services and the provision of international transmission facilities, a point I understand, Mr. Chairman, you made yesterday in your opening remarks.

We believe that increasing competition in the provision of services will benefit the user, but an unstructured growth in transmission facilities could adversely affect the quality and cost of communications services and therefore not be in the best interest of the user.

It is also important in this regard to distinguish between the domestic and the international marketplace. The international marketplace differs significantly from its domestic counterpart. Since most other countries have placed the ownership and operation of communications systems under government control, the establishment of competing facilities by many foreign governments would result in an administration in competition with itself.

Thus, even if economic, technological, and market conditions were somehow able to make alternative facility networks feasible, there would be no incentive for other countries to support and operate independent systems. And, of course, a new international facility cannot be implemented without the acquiescence of the foreign entity involved.

Economic, technological, and market trends suggest that the economies of scale currently offered by the international satellites and submarine cable systems will continue. Moreover, the operational benefits made possible by international common user systems would decrease if limited, special purpose, or independent competing systems were constructed. Any reduction in this interconnectivity resulting from these separate independent systems would only reduce the value of the common user system, particularly for the overwhelming majority of countries unable to justify or economically support two or more international satellite systems.

We are concerned that efforts to promote competition in the provision of international transmission facilities could foster an unstructured approach to Earth station ownership and operation. This would lead to a costly, inefficient use of the geostationary orbit/radio frequency spectrum resource and a degradation of service. Such a result would adversely affect all users of the system.

In view of the technical, operational, and economic constraints on competition between facilities such as Earth stations, it is more realistic to anticipate the expansion of U.S. services than to assume that competing international systems can be created. As has been demonstrated in the domestic communications market, it is possible to enter markets as a competing service carrier without being a facilities-based carrier.

All competitors do not need to own separate and costly facilities in order to compete for services. The greatest opportunity for this country to extend its full range of domestic services to overseas markets is to insure that adequate international transmission facilities are available on a nondiscriminatory basis. Any domestic U.S. carrier that can secure operating agreements with non-U.S. authorities for access to overseas markets should be assured of a connecting capability using satellite and/or cable transmission systems.

In summary, Mr. Chairman, it is timely and appropriate to review our Nation's international telecommunications policy with the goal of increasing competition and decreasing governmental regulation. I believe, however, that it is vitally important, as you consider legislation to accomplish this goal, to distinguish between the domestic and international telecommunications marketplaces and to distinguish between competition in facilities and in services.

Competition in services is desirable, particularly as technology advances and new information requirements develop. The opportunity for competition in facilities, however, is limited. Inefficient and unnecessary duplication of facilities could well be counterproductive.

The unique and outstanding technical, operational, and economic success of Intelsat is built on unmatched international cooperation and the skillful allocation and management of communications resources. I urge you and your colleagues to be mindful of the tremendous achievements that have been realized through this system. In whatever we do, let us be careful that we are indeed expanding and improving, and not, as easily could happen, harming or dismantling it.

Thank you, Mr. Chairman.

Senator GOLDWATER. Thank you very much.

Senator Cannon has some questions.

Senator CANNON. I will pass for the moment, Mr. Chairman.

Senator GOLDWATER. Dr. Charyk, the carriers will argue that to allow Comsat to provide services to end users would actually be detrimental to existing competition. They cite the potential under the bill for cross-subsidization, that a fully separated affiliate is an illusory safeguard. What protection does S. 2469 contain to guard against possible Comsat anticompetitive practices?

Dr. CHARYK. Well, Mr. Chairman, I hardly think that it is illusory. We do have fully separated subsidiaries, in compliance with FCC requirements. The information on these is compartmentalized. The FCC watches over the situation to insure against the kind of cross-subsidy concern that has been expressed. We do not have common officers between the parent and the subsidiaries. The records are clear and distinct and can be examined by Commission staff at any time.

We have had no evidence of any problem in this regard. If something were to arise, I am sure that the FCC, in discharging its regulatory responsibilities, would insure that matters be put in order.

Senator GOLDWATER. There have been some questions raised about whether the bill would require Comsat to establish a second, fully separated affiliate for the provision of retail regulated services, such as the provision of circuits to the Department of Defense. In your opinion does the bill require such a structure?

Dr. CHARYK. I would not view that as required. I think that all that that would lead to would be an additional overhead requirement and additional cost to the Department of Defense, which would not be justified. I think that the necessary assurances that there are no cross-subsidies involved can easily be obtained by the FCC and its staff members, and I think our objective should be to provide the best services to the Department of Defense at the lowest possible cost and not to figure out ways in which those costs can be increased through additional overhead, unnecessary people, and unnecessary paperwork.

Senator GOLDWATER. Do you see the day, short of actual war, when a separate satellite or more would be needed for military purposes?

Dr. CHARYK. Well, the military does have its own separate system.

Senator GOLDWATER. Out of your own shop?

Dr. CHARYK. No, because the routine kind of requirements can be handled through the commercial network and the Department of Defense should have its own specialized system for its unique requirements.

Senator GOLDWATER. Would transfer of Comsat's Intelsat and Inmarsat functions to a separate unaffiliated corporation provide adequate protection from anticompetitive abuses, or is that something you would call overkill?

Dr. CHARYK. Well, since I do not believe there is a problem to start with, I do not see that a transfer would be necessary. We think that, with due modesty, Comsat has played a rather remarkable role in establishing a unique international network that provides communications services on a regular basis to most of the world. I think it is rather unusual in this day and age to have an organization of 106 nations of all stripes that work together, that pay their bills, and that run a profitable business. That is quite unusual in international circles and that is certainly something I would not want to tamper with.

Senator **Goldwater**. Let us keep that going. That is one of a kind.

I do have one more question. Would you comment on the IRC's assertions that if Comsat provides services directly to end users then the IRC's must be given cost-based access to Comsat facilities, either by purchase of an IRU or a long-term capital lease? What is meant by cost-based access and why do you think carriers find reasons for it so compelling?

Dr. **Charyk**. Well, I think that question might be more appropriately addressed to them. I think the important thing is that there be nondiscriminatory access to the international telecommunications system, so that if, for example, Comsat would be making a competitive proposal, that the charges for access to that system be the same to it as to other competing parties.

Now, through the quality of service that is provided, through the kinds of additional service that is offered, presumably there can be compelling reasons why the customer should select one or the other. But I do not see that there should be a confusion between the ownership and operation of facilities and the offering of services. The two are quite distinct.

It would be futile to divide ownership of facilities or to have unnecessary facilities. On the other hand, having a high level of competition in the provision of services using those facilities, and on a basis where there is nondiscriminatory access, I think is sound.

Senator **Goldwater**. Howard?

Senator **Cannon**. Doctor, how are you going to really achieve competition in the international services?

Dr. **Charyk**. Well, Senator, as I indicated in my statement, there is, I think, a certain amount of confusion on this point, in that the international system is quite different than the domestic system. All you can achieve is a multiplicity of competitors on this side. On the other side, you have a single entity.

In some respects, one could argue that a multiplicity of entrants on this side can work against the U.S. user, because the party on the other side can play one off against the other and select the entity to interconnect with that is in the best interest of the overseas party, so that unless it is handled in a very careful fashion you could have a negative impact.

Senator **Cannon**. Well, when you say "handled in a very careful fashion," how would you go about actually achieving competition in the international services area?

Dr. **Charyk**. In the first place, as I indicated, I do not think it is practical to have competition in international facilities. We should avoid unnecessary and duplicative facilities. On the other hand, I believe that competition in the kind and quality of services that are provided utilizing these facilities should be encouraged.

There is, of course, the ultimate requirement that an operating arrangement must be made with the party on the other end. I think it has been our experience that where there is a new and an interesting service to be provided the party on the other end will be cooperative. If, on the other hand, it is a "me too" type service, the attitude of the party on the other side has been one of lack of interest, because there is nothing to be gained by that entity in dealing with a multiplicity of U.S. parties, all interested in providing a "me too" service at the same price.

It simply increases the overhead of the party on the other side, and that leads frequently on this side to a resentment that the party on the other side is noncooperative and somehow should be browbeaten into dealing with a multiplicity of U.S. parties. I think that it is unrealistic in the sense that it is futile to seek to get the party on the other side to increase its cost for no particular gain.

On the other hand, I think that it is true that when there are new and different kinds of services, you do find a cooperative attitude.

Senator CANNON. There has been some criticism as to how successful we were at the WARC 1979 Conference. Do you have any idea how we could improve our performance so that we can best protect our interests?

Dr. CHARYK. Well, Senator, that is a very good question. I think the basic problem is that we only work on the problem in an intensive fashion part time. We get cranked up shortly before the conference and there is a kind of a blitz operation to get prepared, and then after the conference is over we go back to business as usual.

I think in most other countries, and to a limited extent here, there is the full-time activity of worrying about these kinds of questions and determining what the policy of the country should be. I think we need to build up and strengthen our planning operations in this regard, so that when these conferences do come along we emerge from a rather strong position of having studied all of the issues, all of the problems, and with our national position well thought out in advance.

Senator CANNON. One witness has testified that Comsat is able to lease space from Intelsat at a rate that is about half the amount the U.S. carriers must pay to obtain the same capacity from Comsat. If that is so, on what basis is that being done?

Dr. CHARYK. Well, that is simply a confused representation, Senator. The Intelsat space segment charge has no relationship to the cost of providing services. Ideally it would be zero. The concept in Intelsat is that each country invests a certain amount of money, and by virtue of that investment, is entitled to the use of that capacity. So that if the investment and the use were perfectly in balance, you would not need a charge because everybody by virtue of their investment is entitled to the use of that portion of the capacity. So that ideally the Intelsat space segment charge would be zero.

The people who then lease or own the space segment, if you will, derive their revenues by providing services to their customers utilizing that capacity. Now, since you cannot keep the use and the ownership perfectly in balance at all times, Intelsat does set a charge so that, if there is an imbalance, the user who uses in excess of his ownership reimburses Intelsat for that excess usage.

That is based on a 14-percent return on the investment, which is just an arbitrary number that was agreed to as a basis for these adjustments of accounts. Once a year the whole thing is put back in balance. So that the only reason for having a space segment charge at all is to take care of these imbalances which occur during the year, and the specific Intelsat space segment number has no relationship to the cost of actually providing the capacity.

Senator CANNON. RCA has alleged that Comsat will not lease to international carriers space segments separate from ground facilities.

Is that correct?

Dr. CHARYK. That is correct at the present time. There is a tariff which includes the ground segment, as well as the space segment. The ground segment, incidentally, is not owned by Comsat. It is owned by Comsat, A.T. & T., RCA, ITT, and Western Union International. So, basically, the argument says that although we have part ownership of these ground facilities, for some reason we would like to build another station of our own which is from a technical and operational point of view unnecessary. I do not understand the logic of that.

Senator CANNON. Western Union has cited Comsat's 1980 comments on the FCC's pending authorized user proceedings that indicate that it is a plea to the FCC to not thrust Comsat into the retail market. Your testimony indicates just the opposite.

What is the correct situation?

Dr. CHARYK. Well, the correct situation is that we have read the 1962 act to mean that the corporation is authorized to provide service to the U.S. Government. The carriers have argued that the bill does not so provide, and that the Commission in the first instance should not authorize the corporation to deal directly with the Department of Defense. We have repeatedly tried to make efforts to provide service to the Department of Defense in all cases at rates substantially lower than what the carriers were prepared to offer.

In all cases these efforts have been frustrated by the arguments before the Commission that the 1962 act does not permit Comsat to deal with the U.S. Government directly, and with the representation that the Commission should demand extremely high standards of national necessity and need before such a thing should even be considered by the Commission.

So that has been a continual problem from the beginning. I guess the difference stems from our reading of the 1962 act in this regard.

Senator CANNON. Thank you, Mr. Chairman.

Senator GOLDWATER. Thank you, Senator.

I was glad to hear your comments about WARC. We are going to pursue that.

If you have any of your own ideas as to how we might better the next delegation, I would sure like to have them.

Dr. CHARYK. I would be happy to do that, Mr. Chairman.

[The statement follows:]

STATEMENT OF DR. JOSEPH V. CHARYK, PRESIDENT AND CHIEF EXECUTIVE OFFICER, COMMUNICATIONS SATELLITE CORP.

Mr. Chairman, I am Joseph V. Charyk, President and Chief Executive Officer of the Communications Satellite Corporation. I am pleased to have the opportunity to present COMSAT's views regarding S. 2469, the International Telecommunications Deregulation Act of 1982.

As you know, COMSAT has had a long history of involvement in international telecommunications, beginning with our 1962 legislative mandate to establish a global commercial communication satellite system. The International Telecommunications Satellite Organization, INTELSAT, which was created as a result of COMSAT's pursuit of this mandate, has proved to be an outstanding technical and economic success.

I am confident, Mr. Chairman, that history will record the information explosion of the mid to late twentieth century as one of the most significant events in the experience of mankind. Clearly, in this information era, made possible by the marriage of computer and communications technology, we have the potential to achieve social, educational and economic benefits never before possible or even contemplated.

In this period of such great technological advancement, it is appropriate that the Congress consider international telecommunications policy. Whether or not comprehensive legislation is determined to be necessary, this review should provide valuable information on where we are now and where we may want to be in the future. Ultimately, and in the most simple terms, the goal of all involved—both in the government and the private sector—should be the provision of maximum communications services at reasonable costs to users while advancing United States interests at home and abroad.

The history of international satellite communications is one of remarkable technological and managerial achievement within the framework of INTELSAT'S unique political structure. In the relatively short period of 18 years, membership in INTELSAT has grown from 11 nations to 106 nations. The capacity of the satellites used by INTELSAT has increased from Early Bird's 240 simultaneous voice circuits in 1965 to the 12,000 voice circuits now provided by each INTELSAT V Satellite. The INTELSAT global communications network now carries traffic over more than 1000 pathways that link 315 earth stations in 136 nations and territories. Message telephone telex, data, television and audio programs are provided with a continuity of satellite system service that exceeds 99.9 percent.

Although the cost of building and launching satellites have increased steadily, the unit cost of satellite capacity has declined as satellites with longer life and greater capacity have been added to the system. As a result, user costs have been reduced significantly since the inception of satellite services.

The remarkable growth and stable management of the space segment by INTELSAT reflect favorably on the foresight of the United States in enacting and implementing the provisions of the Communications Satellite Act of 1962 (hereinafter called the 1962 Act). We truly can take pride in the major contributions that U.S. technology, ingenuity and leadership have brought to this common venture, which today is so vital a part of the worldwide network serving developed and developing countries alike. Together we have forged an infrastructure for international telecommunications via satellite that is unsurpassed in reliability and efficiency and which now carries about two-thirds of the world's international telephone traffic and virtually all intercontinental television transmissions.

COMSAT also represents the United States in the International Maritime Satellite Organization, INMARSAT. This thirty-seven member organization provides over 1,200 ships and offshore rigs with high-quality satellite communications. The number of member countries will grow, and the positive impacts that reliable, instantaneous communications are having on the U.S. maritime industry will be even more evident as the system expands to meet growing requirements and as the system stimulates new uses.

In assessing the current state of international satellite communications and addressing the question of future directions, Mr. Chairman, it is relevant to review the organizational and operational structure of INTELSAT.

INTELSAT is organized under a multilateral inter-governmental agreement. The Agreement establishes the framework for the operation and maintenance of the space segment of the global telecommunications satellite system. Each party to the agreement designates a telecommunications entity, or Signatory, as its representative to the organization. The Signatory for each country can be either a government or private entity. COMSAT. is the designated entity of the United States, but in most countries a government entity has been designated. This is a significant point that I will discuss in more detail later.

INTELSAT owns and operates the satellites or space segment, and the Signatories are owners (except in the United States where other carriers are part owners) and operators of the earth segment. Each Signatory in turn owns a share of INTELSAT proportionate to its use of the system. Through this arrangement, the technical integrity, operational efficiency and equitable access of and to the system are maintained. It is critical that the system's integrity, efficiency and accessibility be maintained if users are to be insured of maximum service at reasonable costs.

Because of the outstanding success of INTELSAT and its multi-national character, Mr. Chairman, I caution against unilateral policy decisions by any member nation that are inconsistent with or contrary to the basic structure of the INTELSAT system. With this in mind, let me turn to several of the provisions of S. 2469 that raise some serious questions.

A major purpose of S. 2469 is to promote competition. While we support this objective, we believe it is important to distinguish between the provision of international communications services and the provision of international transmission facilities. We believe that, while increased competition in the provision of services will benefit the user, an unstructured growth in the establishment of certain transmission facilities would affect adversely both the quality and cost of communications services and is therefore not in the best interests of the user. Before discussing this, it is important to draw a distinction between the domestic and international marketplaces.

Within the United States we are witnessing a transformation of the communications industry resulting from advancing technology, expanding markets, and a changing industry structure. The combination of new technologies, favorable regulatory climate, and increased opportunity for profits in the vast and expanding U.S. communications market has encouraged a variety of new suppliers to enter this market. These new entrants include equipment suppliers and service carriers offering a variety of new, enhanced and traditional services. In some cases the new domestic competitors offer their services using transmission and switching facilities over which these services are provided.

The international marketplace, however, differs significantly from its domestic counterpart. Our domestic policies, industry structure and national objectives are not necessarily shared by other countries. Since most other countries have placed the ownership and operation of communications systems under government control, the establishment of competing facilities by many foreign governments would result in an administration in competition with itself. Thus, even if economic, technological and market conditions were somehow able to make alternative facility networks feasible, there would be no incentive for other countries to support and operate independent systems so that the United States could engage in facility competition. And, of course, a new international facility could not be implemented without the acquiescence of the foreign entity involved.

Economic, technological, and market trends suggest that the economies of scale currently offered by international satellites and submarine cable systems will continue. Moreover, the operational benefit made possible by international common user systems would decrease if limited, special purpose, or independent competing systems were constructed. Consider for example, that the global INTELSAT satellite system allows interconnection between and among 89 countries and territories in the Atlantic Ocean region, 26 countries in the Pacific Ocean region, and 55 countries in the Indian Ocean region. Any reduction in this interconnectivity resulting from separate, independent systems would only reduce the value of the common user system, particularly for the overwhelming majority of countries unable to justify or economically support two or more international satellite systems.

Even if competition in the provision of international transmission faciliites were technically and operationally practical, an unstructured growth of certain international transmission facilities, such as earth stations with direct access to INTELSAT, would result in costly inefficiencies and a degradation of service for all system users.

The INTELSAT space segment has limited bandwidth, orbital locations and radio frequency power available for its down-link transmissions. Considering these restrictions, the INTELSAT system is designed to accommodate a large number of users while maximizing efficient use of the orbit/spectrum resource. The system therefore depends on extensive frequencies reuse techniques with limited coverage down-link beams for the space segment and large, highly sensitive earth station antennas with high polarization isolation and narrowly shaped beams for the ground segment.

The current operating system and that planned for the next decade are designed to handle large traffic streams among relatively few countries and lesser traffic streams among many other countries. In accordance with the INTELSAT Agreements (and consistent with the 1962 Act), the traffic of smaller (generally less developed) countries is accommodated equitably, even though the size of their traffic streams makes less efficient use of the space segment. To accommodate this traffic from smaller nations where the installation of large antennas may not be economically justified, INTELSAT has established a method of access via smaller antennas. The use of smaller earth stations requires more satellite power and reduces the capacity available to other users, thereby decreasing achievable efficiency. INTELSAT therefore permits access via small antennas only in a rigidly controlled fashion. Conversion to the large antenna facilities is encouraged as soon as the volume of traffic justifies the investment.

Our concerns that an unstructured and ad hoc approach to earth station ownership and operation would lead to costly inefficiencies and possible harm to the INTELSAT system are based upon operational considerations. To maintain acceptable level of efficiency, the INTELSAT space segment as designed cannot accommodate a multiplicity of small, relatively inexpensive, earth stations. We realize that under carefully controlled conditions, earth stations owned by entities other than COMSAT may be permitted to access the space segment. In this situation, however, centralized management is particularly important.

In view of these considerations, we urge the Subcommittee to take into account the danger of an unstructured approach to the growth of earth stations with direct access to INTELSAT in its deliberations on the question of competing facilities. Section 304(i) raises this issue by allowing the Federal Communications Commission, for the first time, to authorize non-carriers to own earth stations. Moreover, although this subsection suggests some form of Commission oversight with respect to such earth stations, other sections of the bill support a contrary inference. For example, section 616(a) provides that any person other than a dominant carrier, upon notification to the Commission, may construct, acquire, or operate international transmission facilities or engage in international communications over such facilities. Also, section 623 purports to deregulate all customer-premises equipment although that team is not defined in the bill. Although we do not believe that these provisions are intended to do so, if they were interpreted as applying to earth stations, the Commission would be denied meaningful control over earth stations constructed by unregulated carriers or as customer premises equipment. And regardless of any procedures or controls that we may choose to establish, there is no reason to assume that access to the international satellite system is automatic. On the contrary, the opposite is likely; that is, denial of access if the projected ground network is harmful to the efficient and economical operation of the space segment.

In view of the technical, operational and economic constraints on competition between facilities, it is more realistic to anticipate the extension of U.S. services than to assume that competing international systems can be created. As has been demonstrated in the domestic communications market, it is possible to enter markets as a competing service carrier without being a facilities-based carrier. All competitors do not need to own separate and costly facilities in order to compete for services. Thus, it would seem that the greatest opportunity for this country to extend its full range of domestic services to overseas markets is to insure that adequate international transmission facilities are available on a nondiscriminatory basis. This means that any domestic U.S. carrier that can secure operating agreements with non-U.S. authorities for access to overseas markets would be assured of a connecting capability using international satellite and/or cable transmission systems. In this manner, competing services can be established without producing inefficiencies and degradation of service in the INTELSAT system.

Let me turn to a brief review of the other principal provisions of S. 2469.

INTERNATIONAL TELECOMMUNICATIONS AND INFORMATION TASK FORCE

Title II of S. 2469 would establish an International Telecommunications and Information Task Force. The Task Force would have broad authority to coordinate policies, review policy determinations, conduct a study of long-term goals, and review the structures, procedures and mechanisms used to develop telecommunications policy.

I recognize the need for some kind of high-level policy coordinating and review mechanism. As I have noted in other parts of my statement, the continued availability and future development of telecommunications services are vital to our national interests. Because of this, we need to insure the proper development and implementation of communications policies. I do have reservations, however, about the ability of a task force to deal effectively with a broad range of issus and interdepartmental interests.

Serious consideration should be given to defining more clearly the purposes and powers of whatever entity is designated to have this responsibility. For instance, I do not believe that any such policy function should be involved in the implementation of day-to-day matters or the regulatory or adjudicatory functions that are more appropriately addressed through existing procedures. As an example, the present government guidance/instructional processes regarding COMSAR activities with INTELSAT and INMARSAT should not be subjected to another layer of government review. Such review would complicate and possibly preclude timely action in pursuit of U.S. objectives in these organizations.

There is one issue within this general subject that needs early attention, Mr. Chairman, and that is how to meet the new challenges facing this country in various international telecommunication fora. This need is particularly apparent with regard to those issues surrounding allocation and use of frequency spectrum and the geostationary orbit. COMSAT has a direct and continuing interest in the ability of this country to develop and implement policies that will assure continuing access to these resources on sound principles. U.S. policies and positions taken within the International Telecommunications Union (ITU) over the next several years will be crucial to the future direction of telecommunications. I need not elaborate for the Subcommittee the degree to which our national security and social and economic well-being depend upon reliable communications which in turn depend upon access to spectrum and orbit. The enormous stakes for the future are obvious to those who have examined the issues. I believe there are sufficient reasons to question whether the United States is now equipped to address effectively the basic problems that are causing more and more controversy at meetings of the ITU, particularly the growing differences over principles of spectrum management between the developed and developing countries. An examination of this issue is overdue in my opinion.

AMENDMENTS TO THE COMMUNICATIONS SATELLITE ACT OF 1962

As the Subcommittee knows, the 1962 Act includes a number of provisions that apply certain unique corporate characteristics to COMSAT. It was felt appropriate at the time of enactment to include these provisions because COMSAT was to be created as a new entity to carry out the statutory mandate to represent the United States in a global communications satellite system. Under this mandate, COMSAT has been and remains committed to promoting the United States' interests in INTELSAT and INMARSAT. While COMSAT's success in achieving the statutorily imposed objectives and the maturing of the INTELSAT system might suggest that these objectives are no longer important, we believe that the United States has an even greater role to play in shaping the future of global communications. At the same time, the passage of almost twenty years since the establishment of COMSAT and the continuing jurisdiction of the Federal Communications Commission justify the removal of certain of these special corporate features applied to COMSAT by the 1962 Act. Our views on these changes are as follows:

Presidentially appointed directors.—The 1962 Act provides for the appointment by the President, with the advice and consent of the Senate, of three members of the COMSAT Board of Directors. Section 304(a) of S. 2469 would repeal this provision. Throughout the history of COMSAT, the Presidentially appointed directors have made valuable contributions to the Board. COMSAT, of course, continues to have a special role in representing the United States within INTELSAT and INMARSAT, and this is a factor that should be carefully considered in addressing the possiblity of eliminating the Presidentally appointed directors.

Corporate financing.—Section 304(b) of S. 2469 repeals section 201(c) (8) of the 1962 Act, which requires Commission approval of any new issuance of stock, borrowing of money or assumption of obligations in respect of the securities of any other person. We support the repeal of this section in order to permit COMSAT to direct its own financial affairs in keeping with sound management practices and recognized accounting procedures.

Incorporation and no-par value stock.—Sections 304(c) and 304(e) would permit the incorporation of COMSAT in any U.S. jurisdiction, not just the District of Columbia, and authorize COMSAT to issue par as well as no-par value stock, respectively. We support these provisions.

Earth station ownership.—Section 304(i) dealing with earth station ownership and its broad implications are discussed on pages 7–9.

Authorized user policy.—Section 304(k) of S. 2469 addresses the authorized user issue that continues to be a matter of policy concern before the Commission. This deals, of course, with the question of which users other than authorized carriers can acquire channels of communication directly from COMSAT. Section 304(k) provides that any party may deal directly with COMSAT for communication satellite channels whenver the Commission finds it to be in the public interest. This is consistent with or interpretation of the authorized user provision of the 1962 Act.

OTHER SIGNIFICANT PROVISIONS

Relationship between domestic and international telecommunications.—S. 2469 does not treat in any manner the relationship between international and domestic telecommunications or how the provisions of S. 2469 might impact a carrier providing services in both spheres. For example, could a carrier classified as a dominant international carrier under S. 2469 and required to establish a fully separate affiliate (FSA) for providing deregulated service also be required to establish a second FSA under domestic policies? Also, none of provisions of S. 2469 appears to treat interconnection requirements between domestic and international services.

Distinction between regulated and unregulated services.—S. 2469 provides for a classification of international services as regulated or deregulated. However, the Commission would have jurisdiction over only those services classified as regulated. We are concerned that legislation based upon the ability to classify and regulate particular categories of services may soon became unworkable as lines separating services became increasingly blurred by technological advances. For example, dataphone service is provided within regular massage switched telephone service and any separation for regulatory purposes appears impractical. Morever, integrated digital services provided over a common facilities network make no distinction among voice, record or data services.

Facilities planning.—We support section 617, which provides for the Commission to establish a process and provide guidelines for the planning, construction and utilization of international facilities. We note that section 605(b) explicitly provides for the Commission to take account of the views of other sovereign nations in reaching decisions on the construction and use of international transmission facilities.

Representation at international telecommunications conferences.—I am pleased that section 306 of S. 2469 would restore the role of private sector representatives as full members of U.S. delegations to international telecommunications conferences. COMSAT continues to be an active participant at conferences of the ITU and meetings of the CCIR and CCITT. Our representatives have served as members of U.S. delegations on numerous occasions, and we expect to support U.S. Government efforts in the future.

It is our interpretation of Section 306 that it applies only to those international conferences where the U.S. Government forms an official U.S. delegation and determines that representatives from the private sector are required and should be included on the delegation. With regard to INTELSAT and INMARSAT, we believe this would apply only to meetings of the Assembly of Parties of INTELSAT and the Assembly of INMARSAT.

Equitable market access.—S. 2469 gives the Commission considerable powers with regard to enforcement of what is defined as "equitable market access." Section 624 generally provides for the commission to undertake means to assure that U.S. carriers and other entities have similar access to foreign markets and facilities as foreign entities have to U.S. markets and facilities. While we have no particular problem with the basic principle being addressed in section 624, we are concerned that the administration of this provision could have an adverse impact on our relationship with other participants in INTELSAT and INMARSAT. Some additional consideration on the practical application of the principle of equitable market access would help us evaluate any possible negative consequences on U.S. international telecommunications interests.

Full separate affiliates.—Section 606(d) clearly allows the management personnel of an international carrier, which has been classified by the Commission as a dominant carrier, to direct the operations of any affiliate, including any fully separated affiliate, provided that cost of such direction be properly allocated to the appropriate entity. This is an important point, but section 606(d) is in apparent conflict with Section 620(a), which prescribes very clear lines of corporate structure separation between a dominant carrier and any fully separated affiliate that would make the managment direction allowed in section 606(d) almost impossible in a practical sense.

Interconnection.—We generally support the interconnection requirements of Section 610 and believe they help foster competition in international services, the area where we believe international competition to be most feasible.

CONCLUSION

It is timely and appropriate, Mr. Chairman, to review our country's international telecommunications policy with the broad goal of increasing competition and decreasing governmental regulation. I believe it is vitally important as you consider leglslation to accomplish this goal to distinguish between the domestic and international communications marketplaces and to distinguish between competition in facilities and services.

United States public policy can address domestic communications issues; however, other nations and organizations beyond control of our laws and regulations are essential parties to international communications. The structure of foreign markets are different from our own, due in large part to government ownership of communication facilities in most countries. United States policy simply must not be established without regard for these differences.

Competition in services is desirable, particularly as technology advances and new information requirements develop. The opportunity for competition in facilities is limited. Inefficient and unnecessary duplication of facilities could well be counterproductive.

The unique and outstanding ssuccess of INTELSAT is built on unmatched international cooperation and the skillful allocation and management of communications resources. I urge you and your colleagues to be mindful of the tremendous achievements that have been realized through this unique system. In whatever we do, let us be careful that we are indeed expanding and improving, and not, as easily could happen, harming or dismantling it.

Senator GOLDWATER. Thank you very much.

The next witness will be Mr. Richard Nichols, vice president, Overseas, American Telephone & Telegraph Co.

Mr. Nichols, welcome.

STATEMENT OF RICHARD B. NICHOLS, VICE PRESIDENT, OVERSEAS, LONG LINES DEPARTMENT, AMERICAN TELEPHONE & TELEGRAPH CO.

Mr. NICHOLS. Thank you, sir.

Good morning, Mr. Chairman. Like Dr. Charyk, I have already submitted a copy of my full statement and I will try to brief it here this morning.

As you have indicated, I am Dick Nichols, vice president of A.T. & T. Long Lines Department for Overseas. For the past 10 years I have had the responsibility of directing my company's participation in the planning and provision of telecommunications services throughout the world. Within this time we have seen telephone calling grow at the rate of almost 25 percent year over year, growth which is due in no small part to the recognition in foreign countries of the critical importance of telecommunications in the increasingly interdependent world community.

In addition, we have witnessed the development of new and exciting technology. For example, we are presently planning the deployment of a fiber optics undersea cable system across the Atlantic in a little over 5 years from now, and expect to provide similar cables in other areas soon thereafter.

Satellite technology is also rapidly advancing. I submit that the U.S. telecommunications industry has clearly demonstrated its ability to provide efficient and affordable worldwide communications, and given the right opportunity, I think we will continue to remain preeminent.

On the basis of this confidence in the industry, I endorse the main thrust of S. 2469. All carriers should compete in the international services market and make full use of available technology, with regulation held to a minimum.

As I have discussed in prior appearances before congressional committees, we must also bear in mind that U.S. international service carriers require the close cooperation of their foreign counterparts in the planning and provision of international telecommunications. The foreign carrier—whom we call our correspondent—

must provide the other half of the facilities necessary to complete a call, including not only the international transmission medium, but also the domestic connections in that foreign country.

In order to provide the high quality service which our customers expect, we must constantly work very closely with our overseas correspondents whose ability to provide matching facilities is indispensable to this joint endeavor.

Accordingly, I am gratified that S. 2469 explicitly recognizes the need to consider the interests and concerns of the foreign telecommunications administrations and their governments, and I hope the subcommittee continues to focus on the need for international comity throughout its deliberations on the bill.

Against this background, I am concerned that several provisions in this legislation may undercut the commitment to international comity and may lead to disruptive confrontations with foreign administrations. For example, the bill proposes to grant to the FCC broad reciprocity powers. If those powers are sought to be exercised to coerce an overseas correspondent to accept U.S. policy, contrary to whatever public policies might exist in that foreign country, the result could only be hostility and possibly retaliatory action in dealing with U.S. carriers. Disruptions in either existing arrangements or plans for future facilities could undermine the flow of communications in particular and commerce in general between the United States and foreign nations.

I think that exercise of broad reciprocity powers in an attempt to impose U.S. policy favoring competition would also not be warranted because foreign attitudes are already changing as recognition grows of the U.S. industrywide capabilities.

For instance, our British correspondent has recently entered into operating agreements with two new U.S. carriers for the joint provision of international services. Rather than risk direct confrontation and retaliation in a relationship where mutual cooperation is required, I suggest that the legislation express a strong statement of policy in favor of competition, and that diplomatic trade initiatives take place to implement that policy.

In the same vein, I would caution against mandating the removal of all restrictions on the resale and sharing of international service. When the FCC proposed such action in the private line area several years ago, there was quite a vocal protest from the international organization responsible for common carrier telecommunications known as CCITT because they had adopted a recommendation against such action. In addition to negative diplomatic reaction, there could likely be a retaliatory action with many foreign administrations to a unilaterally imposed private-line resale and sharing environment.

Cessation of the present private line-services now available to the U.S. carriers would drastically impair the viability of their overseas business and could conceivably create problems for our Government, especially the military communications.

Again, in order to recognize international comity, I urge the Congress to state a policy favoring resale and sharing and direct the appropriate representatives to pursue that goal in CCITT or other international bodies.

Mr. Chairman, I did have other points, but they are more amply covered in my full statement. In view of the time, I would stop here and welcome any questions.

Senator **Goldwater**. Thank you very much, Mr. Nichols.

Senator Cannon?

Senator **Cannon**. In your opinion, does the bill negatively affect the right of carriers other than A.T. & T. to obtain ownerships in cable facilities?

Mr. **Nichols**. No, sir; I do not think the bill has that effect. Certainly as far as A.T. & T. is concerned, we are not only willing to have carriers have ownership in these cables, but indeed, we are prepared to invite any and all carriers to participate in TAT-8, which is the next cable under consideration, the one I mentioned that will go into service in 1988.

Senator **Cannon**. All of the testimony so far has made the point that international telecommunications is much different than domestic telecommunications, and I agree. In fact, I know about the peculiarities of international telecommunications because I have noticed your recent rate changes and I see that it costs approximately $5 for a 3-minute call to Mexico City but only $3 for a 3-minute call to London.

Why is there that kind of discrepancy?

Mr. **Nichols**. Primarily because we have a through rate to London and we have what we call an end-on rate to Mexico. In effect, when you call Mexico you pay the domestic rate to the Mexican border. Then you pay the Mexican rate once you cross the border to get to Acapulco or Mexico City. Those rates are extremely high.

Senator **Cannon**. In light of the foreign monopolies, what affirmative steps can the Government of the United States take toward achieving competition in the provision of international facilities and services?

Mr. **Nichols**. Frankly, sir, I would prefer to see simply a strong statement of policy affirming the support for competition. We have already seen competition begin in certain foreign countries. And once it begins in, let us say, one country in Europe, it tends to spread.

If I may, let me give you a quick example. There was one small carrier who wanted to offer service to Europe. They were uniformly rejected by all the countries in Europe until finally they made an agreement with just one country. Once they had the agreement with that one country, one by one all the others fell in line. Now that small carrier is doing business with virtually all, if not all, of the European countries.

I suggest the same thing will continue to happen as time passes.

Senator **Cannon**. In your testimony you noticed the recent movement in Britain toward competition. Are there other countries that are following or even considering following the path toward an open market?

Mr. **Nichols**. Yes; but they are not as far along as Britain.

In Germany, for example, the secretary over there who is in charge of what we would call monopoly activities is strongly urging the Deutche Bundespost to allow competition particularly in the terminal equipment arena. I fully expect that that will happen shortly. In other countries they already have a certain amount of competition in the terminal arena.

As far as handling communications, particularly long-distance telephone, for example, the progress is slower, but I think it will come.

Senator CANNON. You heard the question that I posed earlier to Dr. Charyk about WARC-79.

What do you think about the performance of the United States at that conference, and how might we improve our performance in the future?

Mr. NICHOLS. I would have to say candidly, Senator, that I am not that close to WARC. I do not have that kind of direct relationship to that activity. But from what I did see, I would have to simply endorse what Dr. Charyk already said. We do need to get our act together.

Senator CANNON. Would you feel more comfortable about the concept of reciprocity if it were vested solely in the President, if the President had veto power over any regulatory decision based on the overall international trade policy?

Mr. NICHOLS. I would feel better, but I would make the point that reciprocity in the field of telecommunications, international telecommunications, really is a non sequitur, because we as U.S. carriers do not reach any foreign shore, and no foreign entity reaches the U.S. shore. It is all done on a cooperative basis. So reciprocity in the sense of the provision of telecommunications services really does not follow. It is not the same situation as buying and selling hardware in one country or another.

Senator CANNON. Thank you, Mr. Chairman.

Senator GOLDWATER. Mr. Nichols, what restructuring of A.T. & T. do you see this bill requiring beyond that which would be required under the proposed consent decree and under the FCC's computer 2 inquiry?

Mr. NICHOLS. I think the reorganization required by those two are quite enough. Quite candidly, I do not see anything in this bill that requires any further reorganization.

Senator GOLDWATER. Would it be a little bit early to tell?

Mr. NICHOLS. Well, I have spent quite a bit of time studying this bill, Mr. Chairman. If, for example, it is necessary to have some sort of separate subsidiary to handle the sale of competitive services at some time in the future, we already will have a separate subsidiary in A.T. & T. handling competitive services, and I see no reason why that entity could not fulfill that function.

Senator GOLDWATER. Some carriers have said that A.T. & T.'s dominance in the provision of overseas voice services is like A.T. & T.'s control of local-loops domestically. Hence, divestiture of such functions from competitive international services would be appropriate.

I do not believe you would agree with that.

Mr. NICHOLS. Yes, sir.

Senator GOLDWATER. You agree?

Mr. NICHOLS. I agree with that statement.

Senator GOLDWATER. Again, I think possibly that answer has to come at some later time. And an NTIA commissioned study is cited for the proposition that unlimited A.T. & T. entry into nonvoice markets would be disastrous to competition and international services.

Does this bill in your opinion allow for such unlimited entry?

Mr. NICHOLS. In my opinion it would allow for unlimited entry for A.T. & T. or any other carrier in the sense of entry into any type of service. That would also mean that other carriers could get into the MTS, the message telephone business. But there are, of course, restrictions in this bill on A.T. & T.'s manner of entry into competitive services—primarily the provisions relating to the separate subsidiary which I referred to in an earlier answer, along with continued FCC regulation to prevent cross-subsidy. But I do obviously have a problem with accepting the thought, whether expressed by NTIA or by other carriers, that we would overpower them. We think that there is some room there for all carriers, to be sure. But for example, we are not in the telex business domestically. It would not make sense for us to get into the telex business internationally. Private line data, probably so. We would not overwhelm.

Senator GOLDWATER. One more question. Some carriers have expressed the fear that if A.T. & T. entered a nonvoice international market there would be a tendency for foreign correspondents to avoid multiple U.S. carriers and turn over all business to A.T. & T.

Now, this clearly is not a desirable result from our perspective. How realistic do you think this fear really is?

Mr. NICHOLS. This would follow along the answer I gave to an earlier question. I do not think it is a realistic fear. Once again, a large portion of this record carrier business is in the telex field where we would not propose to enter. As far as private line is concerned, ordinarily private lines are sold to customers within the country originating the sale. So we might, for example, sell service to the airlines or to the Government, but I can guarantee you that unless our rates come down, we are not going to be anywhere near competitive.

At the present time our rates are substantially above those of the record carriers. As far as the future goes, for other types of data services that are not even offered today, we will all be at the starting line together. I do not think that this is really a serious threat.

Senator GOLDWATER. Thank you very much, Mr. Nichols.

Mr. NICHOLS. Thank you, sir.

[The statement follows:]

STATEMENT OF RICHARD B. NICHOLS ON BEHALF OF AMERICAN TELEPHONE & TELEGRAPH CO.

INTRODUCTION

Mr. Chairman, my name is Richard B. Nichols. I am Vice President-Overseas for the American Telephone and Telegraph Company's Long Lines Department. Prior to this assignment I was Vice President-Marketing for Long Lines. In my 36 years with the Bell System, I have held a variety of positions in marketing, engineering, operations and accounting.

For the past ten years, I have had overall responsibility for directing the Long Lines Department's involvement in planning and providing telecommunications services between the United States and other countries throughout the world.

In the last few years I have appeared several times before various subcommittees of Congress to express views on proposed legislation regarding international telecommunications. Before discussing the present proposal, S.2469, I would like to reiterate briefly the basic arrangements under which international telecommunications is provided, the dramatic growth and increasing importance of international telecommunications, as well as to recap some of the major points I have raised in previous appearances.

Unlike the traditional practice in domestic communications, U.S. international carriers do not provide the entire service. A foreign international carrier—usually an administration of a foreign government—plays an equal role to that of the U.S. carrier in international telecommunications. Each carrier—the telecommunications industry in this country and the foreign administration abroad—provides or arranges access to the domestic telephone network within its country, provides connections to overseas facilities and provides or arranges for half the overseas facilities. Thus, access or entry to each country is provided by its respective carrier. No U.S. carrier actually accesses or enters the foreign country, nor does any foreign carrier actually access or enter the United States.

Because international telecommunications services are provided jointly and equally, it has become the international practice that each carrier assume the costs of its portion of the service and receive half the revenues from the service.

These arrangements have been, and continue to be, very successful, leading to substantial growth in international telecommunications. The dramatic increase we have experienced in overseas calling continues unabated. Telephone message volumes are growing at a rate of about 25 percent annually. While there may be variations from year to year, the long term growth rate is expected to continue at that level.

Technological advances, as well as other improvements in the network, are necessary to keep pace with the growing demands for international services. As most of you know, AT&T is vigorously pursuing the development of underseas fiber optic technology, looking toward the implementation of such a cable across the Atlantic in 1988. Both that exciting technology and advanced satellite technology offer international service capabilities unimagined a decade or so ago.

The various countries around the world are becoming more acutely aware of the central role played by telecommunications as nations become increasingly interdependent. And there is a corresponding commitment by industrialized—and developing—countries to improve the quality and expand the scope of their telecommunications services, both domestically and internationally.

All of this simply emphasizes the vital importance of international telecommunications to United States social, economic and political interests. Clearly, the United States must strive to retain the historic, pre-eminent position it has enjoyed in this arena, but, equally as clear, there is no guarantee that it will do so. Hence, any actions by the United States regarding international telecommunications must be soundly based and carefully and thoughtfully implemented so as not to result, in actual fact, in a disservice to our national interests.

In my previous appearances regarding other proposed bills I focused upon the following important points:

1. The essential role played by the foreign telecommunications administrations, whom we call our "correspondents", in planning and providing international telecommunications services and facilities;
2. The proper recognition that this endeavor, by its nature, requires the mutual cooperation of sovereign nations and that their interests and concerns must be considered, particularly in implementing new policies;
3. The avoidance of unilateral or punitive actions that would disrupt delicate relationships with foreign countries and adversely affect international telecommunications services;
4. The importance of an effective, timely process for coordinated cable and satellite facilities planning;
5. The need to avoid, and remove, where present, artificial constraints on the services that can be provided by carriers; and
6. The importance of the goal of decreased regulation accompanying the movement toward increased competition.

Now, as to the present bill I have mixed reactions. The main thrust of the bill is the establishment of a national policy favoring reliance upon the competitive marketplace in the provision of international telecommunications services. Encouragingly, that step is accompanied by a legislative mandate to deregulate where possible. If deregulation is not feasible in some areas, only minimal regulation is to be imposed. This, I believe, is the proper focus for legislation.

Significantly, this bill also correctly recognizes the joint effort necessary in providing international telecommunications, the essential role played by the foreign administrations as representatives of sovereign nations and the need for international comity. However, I'm afraid that other provisions of the bill would undercut substantially that commitment to comity and may hold the seeds for potentially disastrous confrontations with foreign administrations. Specifically, I refer to the provisions of Section 624, dealing with reciprocity, and Section 614(c), which appears to grant broad power to the Federal Communications Commission to "vacate or modify" contractual arrangements between United States carriers and their foreign correspondents. I have grave reservations about those sections and believe that ultimately they may disserve the stated goals of this bill.

Again on the positive side, the bill attempts to remove present artificial constraints upon the kinds of services that can be offered by various carriers. I fully support the idea that all carriers, including AT&T, should be allowed to make full use of available technology to meet the overall needs of their customers. I am concerned, however, that language in the bill might permit the FCC to frustrate the development of full competition among all carriers for all services.

The bill also prohibits tariff restrictions as to resale and sharing of regulated international telecommunications services. AT&T is not opposed to that concept, and has so stated in its comments in the FCC's proceeding to address that issue. However, there are some possible consequences of such action that could be adverse, particularly to customers currently using international private line services. I will explain this problem in more detail later, as well as offer some suggestions.

Finally, as to facilities planning, I believe this bill holds out promise for a satisfactory approach to the problems in this area. Again, however, I do have a few suggestions which I will mention later.

Those are my general observations on the major portions of the bill. I also have some minor concerns about parts of the bill. For instance, some language is ambiguous and requires clarification. I will discuss some of these provisions of the bill later in the main body of my statement, and others of them (including suggested "technical" amendments) will be made available to the Subcommittee.

RECIPROCITY

Reciprocity is the heart of my concern with this bill. Section 624, dealing with equitable market access, is not, in my opinion, an approach likely to bring about the establishment of a competitive environment in international telecommunications.

I assume that this section is intended in part to address the problem of new United States international carriers finding difficulty in negotiating operating agreements with foreign administrations for the joint provision of service between the United States and foreign countries. It is understandable that the makers of United States policy would be anxious to implement a policy to address this issue. However, in setting new policies one must be mindful of the basic nature of providing international services. Foreign administrations are still an essential element, and mutual cooperation is required. Now, some would argue that that is the very reason for granting broad reciprocity powers to the FCC. But, I believe that the exercise of such powers could lead to less mutual cooperation and thus result in chaos and serious discontinuity in the provision of international services which are so important to a broad array of business and individual interests.

For example, actions that would disrupt existing arrangements between carriers or plans for future facilities, in order to coerce a foreign administration into accepting new carriers, could have very serious consequences affecting the flow of communications and commerce between the United States and that particular country. Those foreign administrations, for reasons of their own based on public policy in their countries, may not wish to accept new carriers and may take retaliatory action, which can only have undesirable, destructive effects on international telecommunications services generally.

Perhaps more importantly, I see changes occurring regarding competition that should cause one to wonder whether such drastic measures are needed. The United Kingdom has recently enacted a law placing emphasis upon competition in its domestic market. British Telecommunications International, our foreign correspondent, has recently entered into operating agreements with two new United States carriers for international services. And, I know that attitudes are changing elsewhere. It seems inevitable to me that acceptance of new carriers will be gained.

Thus, I am concerned that measures such as granting reciprocity powers may be perceived by foreign administrations as a unilateral imposition of United States policy and could lead to a "blacklash" movement detrimental to the stated goals of competition.

Since access to foreign markets in general is a pervasive international trade issue, I would suggest that a strong statement of policy by the Congress, along with appropriate diplomatic approaches, perhaps through the office of the U.S. Trade Representative, would be far more constructive, and clearly less destructive, in achieving a competitive marketplace for jointly provided international services.

Of course, Section 624 appears also to be intended to restrict foreign entities from entering and competing within the United States domestic telecommunications markets, which would perhaps be mostly deregulated, while United States companies are restrained by protective policies abroad from entering markets within foreign countries. To the extent that reciprocity powers are granted, ultimately, to deal with equitable entry in the respective domestic markets of the United States and of foreign countries, I strongly urge that jointly provided telecommunications services between the United States and foreign countries be excluded from the ambit of those powers. Again, however, I have substantial concern about the wisdom of such precipitous measures as are proposed in Section 624 and would urge that diplomatic trade negotiations be used as the vehicle to secure more equity in international trade.

As a final comment on Section 624, I note that, as currently written, it requires the Commission to consult and coordinate with the Task Force established in Title II of the bill prior to exercise of any reciprocity powers. That Task Force has a specific duration and may terminate within three years. In order to preserve some intergovernmental dialogue in this area, I would suggest that the Commission be required to continue to consult and coordinate with all the departments and agencies which comprise the Task Force before exercising any reciprocity powers which the Congress might confer through this bill.

EXPANDED FCC POWER OVER CONTRACTS

Section 614(c) of the bill would grant to the FCC powers that it has not been clearly possessed before. It would extend the FCC's powers over contracts to include the authority to vacate or modify a contract between a carrier and a foreign administration relating in any way to any regulated service, if the FCC determines that the contract "is not consistent with the purposes" of this bill.

For example, actions that would disrupt existing arrangements between carriers or plans for future facilities, in order to coerce a foreign administration into accepting new carriers, could have very serious consequences affecting the flow of communications and commerce between the United States and that particular country. Those foreign administrations, for reasons of their own based on public policy in their countries, may not wish to accept new carriers and may take retaliatory action, which can only have undesirable, destructive effects on international telecommunications services generally.

Perhaps more importantly, I see changes occurring regarding competition that should cause one to wonder whether such drastic measures are needed. The United Kingdom has recently enacted a law placing emphasis upon competition in its domestic market. British

This provision appears to be aimed at affecting contracts between foreign administrations and established United States carriers for the purpose of fostering competition, which can be translated into forcing foreign administrations to accept U.S. policies. Again, this implies unilateral, coercive action, which as I have indicated, could have severe consequences detrimental to the goal of international acceptance of U.S. competitive polices.

Moverover, the provision lacks standards to guide U.S. carriers. When the section is read carefully, you can see how broad and dangerous it is. For example, when it speaks in terms of the FCC determining that a contract is "not consistent with the purposes" of the bill, what does that really mean? Does it mean a contract that is "anticompetitive"? Does it mean contractual terms that require an act by the carrier in violation of a specific prohibition in the Bill, It certainly is not stated in those kinds of narrower terms.

Does it contemplate that, in order to pass muster under this section, contracts with foreign administrations must contain an affirmative requirement that the administration accept new carriers? While I think it is highly inappropriate even to think about imposing that kind of obligation, conceivably that falls within the broad language used in section 614(c). Indeed, in the past that very idea has been suggested in legislative proposals as a means of extracting acceptance of U.S. policies. Fortunately, that suggestion was not enacted into law.

Moreover, there is a significant question as to whether an attempt by the FCC to vacate or modify such a contract would be effective. The Commission has no jurisdiction over the foreign parties and cannot compel those parties to assent to a vacation or modification. Moreover, many of these agreements are highly complex, take considerable time to negotiate and involve millions of dollars. An attempt to vacate or modify a contract would place a considerable cloud over that commercial relationship and unduly complicate the future conduct of business. In addition, there is no assurance that the foreign entity would not seek to enforce the contract or collect damages in some other forum either in the U.S. or elsewhere.

It is one thing for the Commission to declare an action or practice of a regulated U.S. carrier, whether it is taken pursuant to a contract or otherwise, to be explicitly prohibited by the Communications Act, or this bill. In such an instance the carrier must cope with any such FCC determination in the best way it can considering the contractual arrangements it has made. On the other hand, to expand the FCC jurisdiction to include a broad power to "vacate or modify" contracts whenever the FCC determines that the contract is not "consistent with" the competitive purposes of the bill is quite another thing. Complex commercial ventures could be thrown into chaos because a contract is purported to be vacated or modified after it has been negotiated and executed, without assent of the parties, by the governmental agency that regulates one of the parties.

In a bill purporting to deregulate international telecommunications, it seems particularly inappropriate to impose heavier regulatory perogatives upon the FCC.

I urge strongly that Section 614(c) should be deleted.

FACILITIES PLANNING

As I have indicated on previous occasions, international facilities planning is an essential ingredient in being able to provide, in a timely fashion, adequate facilities over which services will be provided. Several years ago, I indicated significant displeasure with the lack of effective and efficient facilities planning integrating cable and satellite technology. At that time I was urging Congress to address this problem.

Since then the Commission has made significant improvement to the consultative process which forms the central basis for integrated international facilities planning. Just last year the Commission concluded the first phase of a very successful effort to plan facilities in the North Atlantic for the decade of the 80's. It resulted in a Commission order containing guidelines for us to proceed with the development and implementation of a fiber optic cable in 1988 and for Comsat to proceed with participation in INTELSAT for a new generation of satellites beginning in 1986. Since then the Commission has embarked on a proceeding to address facilities planning in the Pacific Basin and essentially is on schedule with that effort. In sum, I view the situation today as not being as critical as in the past.

As part of the Commission's proposal for introducing competition in the provision of international telecommunications, the Commission has indicated a desire to minimize facilities planning regulation as competition increases. That goal coincides exceedingly well with the precepts of this bill. I wholeheartedly endorse that concept.

The sections of this bill dealing with facilities planning appear to give the Commission the flexibility to withdraw or minimize regulation as the circumstances warrant. It also gives the Commission the flexibility to continue with the planning process, which in the last two or three years has enjoyed success.

There are a couple of other concerns that need to be addressed. The first is that in order to avoid getting back into the old problem of significant delay regarding facilities authorizations, the bill should be modified to impose specific time limits for action by the Commission. I would suggest that a period of, say, six months from filing should be adequate time for FCC action on any facilities application. Secondly, I would expect that the historical practice of joint participation among U.S. carriers in the construction or major new facilities, such as cable systems, would continue in the foreseeable future. In order to plan efficiently for the joint use of international facilities, it is essential that U.S. international carriers be permitted to meet with one another and exchange information. Thus, I would ask that the bill be revised to provide specific antitrust protection for such cooperative endeavors.

While the present bill, in the main, can provide adequately for international facilities planning, particularly in view of the flexibility given the Commission and the emphasis in the bill on minimal regulation and international comity, there must be a determination on the part of the Commission to continue applying sufficient manpower and financial resources to that effort. In addition, the Commission must take every opportunity to minimize the regulation of facilities planning as competitive circumstances warrant.

RESALE AND SHARING

Section 608 of the proposed bill requires that resale and sharing of services be permitted. The FCC has underway a proceeding to address that question and AT&T has indicated in its comments that it has no objection to resale and sharing. Indeed, AT&T intends to file tariff modifications this summer to permit resale of international message telephone service. However, the resale and sharing of private line services present a different and more difficult problem which again demonstrates the complexities which arise from the very nature of the joint provision of international services and the need to consider foreign perspectives.

International private lines are provided in the following manner: the U.S. carrier provides and bills the customer under FCC tariffs for one-half of the circuit, i.e., from the U.S. point to, conceptually, mid-ocean; the foreign administration does likewise for its one-half of the circuit. Thus, separate arrangements must be made for the two distinct halves of this point-to-point dedicated line. And, any resale and sharing of that line must be permitted at both ends of the circuit, which requires cooperation by the foreign administration.

When resale and sharing of international services was proposed by the FCC, the Director of CCITT[1] pointed out that the international body had adopted a recommendation against the resale and sharing of private line services. Also, he declared that unilaterial action by the FCC was inappropriate in light of the international consensus within CCITT. In addition, several large groups of users of international private line services cautioned against unilaterally ordering U.S. carriers to change their private line tariffs to permit resale and sharing, because they feared that foreign administrations would retaliate by ceasing to offer private line services at flat rates. I know from my own experience that the vast majority of administrations are opposed to reseale and sharing of private line services. I think it is reasonable to anticpate that many administrations would respond to a unilaterally imposed private line resale and sharing environment with private line services offered only at usage-based rates. Private line users are very concerned about continuation of the present flat rate for private line services on which they are dependent for the conduct of their business abroad.

Because of the obvious sensitivity of this subject with foreign administrations, it would be incongruous for this bill unilaterally to remove resale and sharing restrictions in carrier tariffs, while at the same time purporting to recognize international comity.

As a way to proceed in this area, I would suggest that the bill be changed to delete the resale and sharing mandate and substitute, instead, a statement of policy favoring resale and sharing. That should be acccompanied by directions to the FCC, and other appropriate government agencies, to pursue that goal within CCITT or any other appropriate international body or forum.

One additional comment is required regarding the present language of Section 608(b). It prohibits restrictions on "resale or other use" of regulated services. The term "other use" is too broad and would encompass any sort of restriction which the FCC might determine to be appropriate. For example, our tariffs presently prohibit "unlawful" use. Since the Section is aimed specifically at resale and sharing, I suggest the phrase in question by changed to read "resale or shared use."

FULLY SEPARATED AFFILIATE

Sections 620 and 621 of the bill establish a requirement that a dominant carrier create a fully separated affilaite to provide unregulated international telecommunications facilities and services. Indeed, AT&T is moving apace to implement such a structural mechanism in compliance with the FCC's order in the Second Computer Inquiry. In view of that, and the restructuring called for by the proposed Modification of Final Judgment arising out of the Department of Justice's antitrust suit against AT&T, I recommend strongly that the bill not specify the terms and conditions of restructure. At most, the bill should simply require that unregualted international services be provided through a fully separated affiliate complying with FCC requirements.

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[1] International Consultative Telephone and Telegraph Committee, the arm of the International Telecommunications Union responsible for common carrier telecommunications matters.

MISCELLANEOUS

There are several amendments I would suggest to clarify certain matters in the bill as presently drafted. These amendments, along with a brief statement of the reasons supporting them, will be made available to the Subcommittee.

However, let me briefly call attention to two of these additional items. Section 607A(a) envisions the continuation of present tariffed services for a period of not less than one year from the date of enactment, said services to be "on an unbundled basis." There are services provided presently that are not "unbundled" and thus cannot, strictly speaking, simply be continued for a period of time and be in complicance with that condition. Compliance would require new tarriffs to be filed. It is suggested that the phrase "on an unbundled basis" be deleted. If a requirement to unbundle is to be imposed, it should only be after the FCC has determined which services shall be regulated, which situations require unbundling and what the most appropriate means would be to implement such decisions.

The second item is Section 610(a)(3), which requires that charges for inteconnection "shall be based upon the costs of the regulated service or facilities." As we are all aware the meaning of the term "costs" can vary widely. Moreover, the recently enacted Record Carrier Competiton Act addressed interconnection but did not impose such a constraint as requiring that the charges be "based on costs." Section 610(a)(3) should either be deleted or revised to establish a "just, fair, and reasonable" standard in order to give the FCC appropriate flexibility. Such language appears in the Record Carrier Competition Act and is similar to the traditional standard of the Communications Act of 1934, a standard that has weathered well over the years.

Naturally, I am vitually interested in any legislation that seeks to address international telecommunications. The delicate and complex relationships surrounding the provision of international services require that any bill be carefully and thoughtfully conceived and drafted in order to create the beat opportunity for achieving the stated national goals without running and unwarranted risk of discontinuity in services and retaliatory measures. I will be happy to assist you in any way I can to find a reasonable course to pursue those goals.

That concludes my statement. I hope it will be helpful and constructive, as it was intended.

Senator **Goldwater**. We appreciate your testimony.

This morning we have two panels. The first panel will consist of Mr. Ronald Coleman, Mr. Eugene Murphy, chairman of the board, RCA Global Communications, and Mr. Howard White, executive vice president and general counsel, U.S. Telephone & Telegraph Corp.

Gentlemen, would you be seated?

I think you have heard my comments about your testimony. If you would like to put your testimony in the record and then comment on it, it would speed things up and accomplish the same thing in the long run.

So Mr. White, we will start off with you.

STATEMENTS OF HOWARD A. WHITE, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, U.S. TELEPHONE & TELEGRAPH CORP.; EUGENE MURPHY, CHAIRMAN OF THE BOARD, RCA GLOBAL COMMUNICATIONS, INC.; AND RONALD COLEMAN, COUNSEL, TRT TELECOMMUNICATIONS CORP.

Mr. **White**. Thank you, Mr. Chairman.

This morning I represent ITT's communications operations companies, including ITT World Communications and U.S. Transmission Systems.

Since S. 2469 could have serious impacts on the ability of these companies to remain viable in competition with entities which have been granted and continue to enjoy large economic and marketing advantages, we appreciate this opportunity to present our views.

For many years ITT has been an active competitor in the international record field. In recent years we have entered the competitive domestic telecommunications market, providing both voice and record services. We have backed our belief in competition with substantial investments and a variety of service offerings which have been well received by the public. Accordingly, ITT supports the procompetition aims of S. 2469.

Although many of the provisions amending the Communications Act are designed to promote international competition, S. 2469 fails to deal with the bottleneck monopolies of A.T. &. T. and Comsat over essential cable and satellite facilities. These bottlenecks could easily be used to stifle competition.

Further, we perceive an overemphasis on reciprocal measures aimed at foreign administrations which do not share the current views of the United States regarding the promotion of competition. ITT submits that such an approach is likely to be counterproductive and fails to recognize that mutual respect and cooperation has been the driving force for progress in international telecommunications.

It is clear that the drafters of S. 2469 intend to foster competition in international telecommunications markets. But what may be most needed to accomplish that objective at the U.S. end of international service is an opening up of the bottlenecks that constrain U.S. carriers. A.T. & T. has the controlling U.S. interest in all international cable facilities landing on the U.S. mainland, as well as virtually all of the international telephone services market. Comsat has a statutory monopoly over U.S. participation in international satellites.

Unfortunately, A.T. & T.'s cable dominance and Comsat's satellite monopoly constitute bottlenecks which are not adequately addressed by this bill.

S. 2469 proposes to eliminate any existing bar to resale and shared use of international facilities and services insofar as the FCC and the U.S. carriers are concerned. Clearly, the right to resell and share use would not solve the access problems of U.S. carriers as they relate to the bottleneck facilities under the control of A.T. & T. and Comsat. And such provisions are not likely to facilitate access to the telephone networks of foreign administration.

To remedy the overriding bottleneck problem, ITT would recommend an approach that recognizes the preexisting monopoly advantages of Comsat and A.T. & T. and provides for the elimination of this problem before their monopoly powers could be used to lessen competition.

Such an approach has already been adopted by Congress. It is found in the Record Carrier Competition Act of 1981, S. 271. If A.T. & T. were required to furnish nondiscriminatory interconnection to the international and domestic segments of its international services and to work out reasonable revenue divisions with carriers that could not obtain direct operating agreements, a competitive U.S. industry could start developing in international voice services.

In addition, this bill should provide that other carriers shall retain their rights to obtain ownership, indefeasible right of user, or cost-based lease interests in high-capacity cables and other bottleneck facilities rather than being relegated to construction of their own cables at prohibitive costs.

If Comsat wishes to retain its monopoly, it should forgo competitive expansion. Conversely, if Congress wishes to permit such Comsat expansion, the time has also come to eliminate Comsat's role as the U.S. signatory to Intelsat and its monopoly role in Inmarsat. If in spite of these equitable considerations Comsat is to retain special monopoly privileges while also being allowed to expand into new competitive markets, the strictest possible preconditions must be imposed.

Briefly, ITT endorses the task force approach in the proposed International Telecommunications and Information Coordination Act, and the legislative intent to establish comprehensive, coherent goals in international communications policy matters.

We believe that S. 2469 is a good vehicle for the serious discussions which should precede the passage of legislation designed to create a reasonable environment for fair competition in international services.

We would be pleased to work with the committee staff to develop appropriate changes.

Thank you, Senator.

[The statement follows:]

STATEMENT OF HOWARD A. WHITE, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, U.S. TELEPHONE & TELEGRAPH CORP. (ITT)

Mr. Chairman, as Executive Vice President and General Counsel of the U.S. Telephone and Telegraph Corporation, I represent ITT's communications operations and information companies. These companies provide modern, efficient and reasonably priced record, data and voice services on a worldwide basis. The group includes such companies as ITT World Communications Inc. and U.S. Transmission Systems, Inc. Since the group derives a major portion of its revenues from international operations, S. 2469 could have serious impacts on its ability to remain viable in competition with entities which have been granted and continue to enjoy large economic and marketing advantages.

For many years, ITT has been an active competitor in the international record carrier field; in recent years we have entered the competitive domestic telecommunications market, providing both voice and record services. We have backed our belief in competition with substantial investments and a variety of service offerings which have been well received by the public. Accordingly, ITT supports the pro-competition aims of S. 2469, as exemplified by Senator Goldwater's statement, in his summary of the Bill, that the FCC should "reduce regulation as competition develops in the provision of services, facilities, or access to or interconnection in foreign markets."

Although many of the provisions amending the 1934 Communications Act are designated to promote international competition, S. 2469 fails to deal with the bottleneck monopolies of A.T. & T. and Comsat over essential cable and satellite facilities. These bottlenecks, to which access on fair and reasonable terms is essential, could easily be used to stifle competition. It appears, however, that by incorporating appropriate principles embodied in the Records Carrier Competition Act of 1981 (S. 271), S. 2469 could accomplish its goals.

Further, we perceive an overemphasis on reciprocal measures aimed at foreign administrations which do not share the current views of the United States regarding the promotion of competition. ITT submits that such an approach is likely to be counterproductive, and fails to recognize that mutual respect and cooperation have been the driving force for progress in international telecommunications.

THE BOTTLENECK STRUCTURE OF U.S. INTERNATIONAL FACILITIES

The introductory statement and various provisions make clear that the drafters of S. 2469 intend to foster competition in international telecommunications markets.

But what may be most needed to accomplish that objective at the U.S. end of international services is an opening up of the bottlenecks that constrain U.S. carriers.

A.T. & T. has the controlling U.S. interest in all international cable facilities landing on the U.S. Mainland, as well as virtually all of the international telephone services market. And Comsat has a statutory monopoly over U.S. participation in international satellites. Unfortunately, A.T. & T.'s cable dominance and Comsat's satellite monopoly constitute bottlenecks which are not adequately addressed by S. 2469.

The costs of cable facilities reflect economies of scale such that the per-circuit investment required for a 4,000-circuit cable is much less than for a 160-circuit cable. Thus, only A.T. & T., with its monopoly of international telephone services, has enough traffic to justify building its own cables. In most circumstances, IRCs or potential new providers of international voice services can not justify the investments which would be required for competing (separate) cable systems.

By statute, international statellites constitute a serious bottleneck, because U.S. carriers must rely on Comsat for access from the United States to such facilities. Indeed, using its monoply position as the U.S. representative to INTELSAT, Comsat is able to lease space segment capacity from INTELSAT as a rate which is about half the sum U.S. carriers must pay to obtain the same capacity from Comsat. (As Comsat acknowledged recently, in FCC proceedings, even the communications entity of the Soviet Union, which is not a member of INTELSAT, can obtain INTELSAT space segment at half the price that U.S. international carriers have to pay to Comsat.)

S. 2469 proposes to eliminate any existing bar to resale and shared use of international facilities and services insofar as the FCC and the U.S. carriers are concerned. While this requirement has been a useful tool in the FCC's efforts to open up domestic markets and to discourage inter-service subsidies, important questions remain to be answered regarding the efficacy of resale and shared use in the international field. Surely, very little would be accomplished by the lifting of restrictions at one end of international circuits without any change at the other end. As against that gesture of support for new carriers and new services, this Committee should weigh the appearance that international negotiations and agreements on such matters are no longer the preferred means for achieving international communications goals of the United States.

Clearly, the right to resell and to share use would not solve the access problems of U.S. carriers, as they relate to the bottleneck facilities under the control of A.T. & T. and Comsat. And such provisions are not likely to facilitate access to the telephone networks of foreign administrations. It may also appear that our Government is encouraging unauthorized use of foreign facilities and record services by unregulated U.S. entities.

Even if one assumes that Comsat and A.T. & T. would be designated as dominant carriers, they would not be obliged to provide competitive regulated services through fully separated affiliates. Furthermore, unregulated resale services could be provided through fully separated affiliates of those carriers at rates which other resellers could not match, inasmuch as the regulated dominant carriers would be assured of good profits on their monopoly facilities and services. In short, without real sacrifice, the resale services offered by the fully separated afffiliates could be priced to produce little or no return.

Unless other carriers are accorded equal access to bottleneck facilities, A.T. & T. can be expected to take full advantage of the economies of scale inherent in its communications capacity requirements and its special arrangements for access to the domestic switched network; Comsat will undoubtedly structure its rates, and arrange its profits, so as to maximize its monopoly advantages.

To remedy the overriding bottleneck problem, ITT would recommend an approach that recognizes the preexisting monopoly advantages of carriers such as A.T. & T. and Comsat, and provides for elimination of this problem before their monopoly powers could be used to lessen competition.

THE S. 271 MODEL

Such an approach has already been adopted by Congress. It is found in the Record Carrier Competition Act of 1981 (S. 271). Although that legislation called upon all of the interested parties to accomplish a great deal in a very short period, there is little doubt that increased competition in the marketing of international services will result. A portion of that regulatory scheme could easily be adapted to the thrust of S. 2469.

Last year, a monopolist in the U.S. market, Western Union, wanted to enter the already competitive international record market. The problem was that such entry would tend to monopolize the international market rather than increase competition. Be deferring international entry of the monopolist until reasonable interconnection and revenue division agreements could be devised, the possibility of true competition was increased, in both the international and the domestic record markets. U.S. consumers should be reaping the benefits very soon.

This Committee is now considering a similar situation in that two entities which monopolize major portions of the international market want to compete in the other segments, even though competition already exists in those areas. Of course, these dominant carriers want to retain their monopolies. If change is necessary, this situation could be dealt with in a manner similar to the one adopted in S. 271.

If A.T. & T. were required to furnish non-discriminatory interconnection to the international and domestic segments of its international services, and to work out reasonable revenue divisions with carriers which could not obtain direct operating agreements, a competitive U.S. industry could start developing in international voice services. In brief, a bifucated domestic/international tariff policy and strict interconnection rules similar to those in S. 271 should be enacted to open up the international voice market.

In addition, S. 2469 should provide that other carriers shall retain their rights to obtain ownership, indefeasible right of user, cost-based lease interests in high-capacity cables (and other bottleneck) facilities, rather than being relegated to construction of their own cables at prohibitive costs. AT&T's obligations to permit such acquisitions may be inherent in the duties imposed by the antitrust laws upon a bottleneck monopolist, but S. 2469 should be broadened to leave no doubt about preservation of this traditional practice, which has resulted in the avoidance of unnecessary costs of service and facilitated the level of the competition that currently exists.

Comsat—like Western Union and AT&T—should not be permitted to retain an entrenched monopoly while also being permitted to expand into competitive markets. If Comsat wishes to retain its monopoly, it should forego such expansion. Conversely, if Congress wishes to permit such Comsat expansion, the time has also come to terminate Comsat's role as the U.S. Signatory to INTELSAT and INMARSAT (with the attendant monopoly advantages of exclusive access to those bodies and preferential pricing arrangements for obtaining bottleneck facilities) and to transfer the Signatory function to the State Department (with appropriate contributions and input from the proposed Task Force). It would be particularly anomalous for S. 2469 to retain Comsat's privileged "quasi-governmental" role as the U.S. Signatory in view of provisions proposing an interagency Task Force on communications foreign policy matters, appointment of a new Deputy Assistant Secretary of State for Telecommunications Affairs, and termination of the presidential appointments to the Comsat Board.

If Comsat is to retain special monopoly privileges while also being allowed to expand into new competitive markets, the strictest possible preconditions must be imposed. At a minimum, such conditions should: enable other carriers to obtain space segment capacity on the same economic terms enjoyed by Comsat; abrogate the Comsat-dominated earth station ownership consortia, and the Comsat practice, amounting to a tying arrangement, of generally refusing to provide space segment capacity unless carriers also use Comsat-controlled earth stations; allow competing carriers to establish their own separate earth stations or otherwise obtain earth station capacity on the basis of need; engender meaningful separations between the Comsat wholesale monopoly and competitive retail operations (even though both may be subject to FCC regulation); and assure that all competing carriers and transmission media have an equal opportunity to appeal to marketplace forces, unhampered by unnecessary regulatory restraints such as cable/satellite usage formulas or rate compositing requirements.

In summary, ITT strongly urges incorporation of the relevant unbundling techniques of S. 271, and employment of the S. 271 philosophy which requires monopolists to permit entry into their own markets as a precondition to their expansion into competitive markets. These are minimum requirements for the promotion of international telecommunications competition.

COMMENTS ON OTHER INTERNATIONAL TELECOMMUNICATIONS DEREGULATION PROVISIONS

In Section 607, the classification of a carrier as "dominant" because it is "dominant" may leave too much room for interpretation, or misinterpretation, even upon consideration of total markets or particular submarkets. A test such as a 50 percent market share, in either domestic or international markets or submarkets, should be added to make it clear which carriers would or would not be classififed as "dominant".

The provisions in Section 620 governing a fully separated affiliate (FSA) do not go far enough to minimize opportunities for anticompetitive practices. While arms-length dealings appear to be contemplated, it is doubtful that such generalizations would be effective without specific prohibitions on joint operations, advertising, etc. Provisions similar to those contained in S. 898 should be included.

The legislation should also specify the circumstances under which an FSA would be required. It is apparently contemplated that a dominant carrier may participate in unregulated activities only through an FSA. In our view, it should be explicitly stated that a separate FSA is also required to separate regulated services which are dominated by a carrier from regulated services which are not. Thus regulation could not be used to conceal subsidies from a dominated service to other regulated services. Moreover, an FSA should not be permitted to offer an unregulated service which is similar to the regulated services of its dominant-carrier affiliate. Such "clone" services would just serve to perpetuate monopoly advantages and make the development of competition more difficult. The time by which an FSA must be established should also be made explicit.

Although the intent of Sections 623 and 624 is laudable, we are inclined to agree with the U.S. Trade Representative, Mr. William Brock, who is opposed to a sectoral approach to apparent trade barriers because it hampers a broader, coordinated governmental approach to such problems. We assume that the Committee will give serious consideration to that point of view.

As international communicators of long standing, we would respectfully caution against undue haste in enacting such legislating simply because most foreign administrations have not yet come to adopt the U.S. view on competition in telecommunications. As a matter of fact, real competition in telecommunications services and facilities in the United States is of recent vintage, and still has a long way to go—as noted in our earlier remarks about AT&T, Comsat and Western Union. At the same time, there are signs that some other countries may be tending toward adoption of views on competition similar to those of the United States. Perhaps more consideration should be given to persuasion through demonstrations of success and public benefits in this country.

In this connection, it should be remembered that cooperation and mutual respect have been the hallmark of progress in international telecommunications. This is only natural, since international communications is inherently a process of joint undertaking between and among carriers and entities subject to different sovereignties. This process necessarily entails cordial participation, by this country and its international partners, in deliberative bodies such as the ITU and INTELSAT and in the consultative meetings with foreign administrations. While some may be frustrated by the slow pace of these procedures, it is well to remember that they have brought us into the age of jointly owned and operated international satellites, and planning for exciting new technologies such as fiber optics.

INTERNATIONAL TELECOMMUNICATIONS AND INFORMATION COORDINATION PROVISIONS

ITT endorses the Task Force approach, and the legislative intent to establish comprehensive, coherent national goals in international communications policy matters.

We are, however, concerned with appropriate procedural safeguards relating to the Task Force's responsibility for making recommendations to federal agencies such as the FCC, under Section 204(a)(4). To ensure administrative due process, any such recommendations should be in writing, with timely notice to interested parties; and the *ex parte* rules should apply. These safeguards are recognized today when NTIA and the Department of Justice submit comments to the FCC.

CONCLUSION

ITT believes that S. 2469 is a good vehicle for the serious discussions should which would precede the passage of legislation designed to foster a reasonable environment for fair competition in international services. We hope these comments will be perceived as constructive contributions; they are so intended.

Thank you for the opportunity to present ITT's comments. We would be pleased to work with Committee Staff to develop the appropriate changes.

Senator **GOLDWATER**. Thank you very much, Mr. White. Mr. Murphy.

Mr. **MURPHY**. Thank you, Mr. Chairman.

As with the other witnesses, I would ask that my prepared statement be included in the record.

Senator GOLDWATER. That will be done.

Mr. MURPHY. In the time available, I would like to summarize key points of my testimony. First of all, let me stress that the international record communications market has always been competitive and is becoming even more so. This is despite the fact that it is less than 1 percent of the size of the domestic communications market. Last year, Congress enacted the Record Carrier Competition Act, with the express goal of promoting to the maximum extent feasible the development of fully competitive international and domestic record communications markets.

The FCC is now in the process of implementing the ground rules contemplated by the 1981 act. A reasonable period of time should be allowed for the carriers and users to adapt to these changes prior to mandating further change. The main effect of the bill would be to open markets to A.T. & T. and Comsat, now foreclosed to them for what we believe are good reasons. To insure an environment where full competition will be possible in international telecommunications, it is important that A.T. & T. and Comsat not be allowed to use their monopoly bases in a manner which would prevent others from competing. Without necessary procompetitive safeguards, A.T. & T. and Comsat entry could indeed stifle competition. This result is inconsistent with the bill's stated objectives, and could make necessary even tighter regulation in the future. A.T. & T. poses a special problem. It has a virtual monopoly of the international voice communications market which accounts for two-thirds of the total international communications market.

We recognize that the bill requires A.T. & T. to establish a separate facility for nonregulated overseas communications services. However, given the difficulty that the FCC has had in the past in regulating A.T. & T., there is ample justification to continue to limit the extent of A.T. & T.'s involvement in record communications. This is necessary to prevent the possibility of A.T. & T.'s eventual dominance of the entire communications market, both voice and record. A.T. & T. should not be allowed to expand its international services unless and until appropriate procompetitive safeguards are adopted. These should include at a minimum: One, strict separation of A.T. & T.'s overseas operation from its domestic operations, and its unregulated competitive services from its monopoly services. Two, the furnishing by A.T. & T. of interconnection facilities which are both, (A) equivalent in type and quality, and (B) provide at the same rates and upon the same terms and conditions as those given to any other entity, including A.T. & T. itself or its affiliates.

Certainly, A.T. & T. should not be permitted to offer overseas record communications which are different and less burdensome than those imposed on the international record carriers under the 1981 act.

With regard to Comsat, Congress gave Comsat its present U.S. monopoly over access to the international satellite system with the understanding that fair terms of competition required that Comsat not offer services directly to the public except in unique and exceptional circumstances. This concept of a carrier's carrier was formalized in the FCC's authorized user decision.

There, the FCC stated, and I quote in relevant part,

> In this instance, we are not confronted by a normal competitive situation. Instead, we have a situation where there is an artificial restraint upon the terrestrial carriers that cannot ordinarily be licensed to provide the essential space segment of the international satellite circuits and thus compete with Comsat on equal terms.

If Comsat is now to be both a wholesaler and retailer, the international carriers must be able to compete with Comsat on a relatively equal footing. This requires authorizing the international carriers to require space segment and Earth satellite facilities on equal terms equal to those that Comsat receives. Let me give two examples of how Comsat's advantage works.

In a recent competitive Government procurement, Comsat quoted RCA Globcom and other international common carriers a higher price per satellite circuit than it included in its own bid to the customer.

Second, in the case of international satellite television transmission service, Comsat charges the common carriers the same price for satellite capacity as the end users. These practices have virtually eliminated the possibility of meaningful competition in this area.

Merely creating a separate Comsat subsidiary would not remove Comsat's advantage. The public will be best served if carriers are authorized to obtain cost based access to Intelsat facilities and are allowed to build their own earth stations to access Intelsat directly.

Turning briefly to other aspects of the bill, we see no need to create a new layer of Government administration to oversee the facility planning process. The primary responsibility for U.S. Government involvement in the planning process should remain with the FCC. However, neither the FCC nor other Government agencies should directly participate in negotiation of facility arrangements or the management of facilities. These tasks are best left to the private sector.

In closing, I would just like to make the point that the legislation should contain safeguards to insure meaningful competition as indicated in the objectives of the act. This will make possible the resources and incentives necessary for innovative, technically advanced, and cost-effective services.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF EUGENE F. MURPHY, CHAIRMAN, RCA GLOBAL COMMUNICATIONS, INC.

Chairman Goldwater and members of the Subcommittee, my name is Eugene F. Murphy. I am a Group Vice President of RCA Corporation and Chairman of the Board of RCA Global Communications, Inc. (RCA Globcom). I appreciate the opportunity to participate in today's proceedings on S. 2469.

RCA Globcom is a common carrier primarily engaged in furnishing international telecommunications services for more than 60 years. We have pioneered many of the services that our industry now offers including overseas leased channels and telex. Today, with over 1,900 employees, we operate a full range of record communications services[1] between points in the United States and the rest of the world, using submarine cable and satellite facilities. We have also recently begun to offer domestic record communications, giving us the ability to meet our customers' total requirements—both international and domestic.

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[1] Record communications services include telegrams, telex, leased telegraph channels, alternate and simultaneous voice/data channels, data and facsimile transmission.

RCA Globcom is firmly committed to the principle of full and fair competition. However, such competition can only exist in international communications if Congress properly takes into account the historic monopoly advantages enjoyed by AT&T and Comsat. If these monopoly-based carriers are permitted into the international record communications market without adequate safeguards, they will be able to exploit their dominant positions at the expense of existing competition. This will inhibit rather than promote competitive opportunities in international communications; make it more difficult for new competitive entrants; and create the need for more rather than less regulation in the future.

Before addressing the bill, I think it may be useful to point out, in broad terms, the general features of the international record communications industry.

First, the market served by the international record carrier industry is relatively small. While the total domestic telecommunications market in 1980 exceeded $55 billion a year in total revenues, the international record communications market in which we operate was about $535 million. That is less than 1 percent of the domestic market.

Second, unlike the predominantly monopolistic domestic market, the international record communications market is already highly competitive. We compete actively for all types of traffic—primarily telex, telegram and leased channel services. At the present time, over a dozen companies compete in this market or are preparing to enter the market. The principal international record carriers include, in addition to RCA Globcom, ITT Worldcom, Western Union International, TRT and FTCC. International non-voice services are currently provided by AT&T through its Dataphone offering, Graphnet, GTE Telenet, Tymnet and Hawaiian Telephone Company. A number of smaller companies are also competing in this market, such as Consortium Communications International and International Relay. Western Union, with its extensive domestic system, will be eligible to offer overseas record communications by the end of July. Other domestic carriers, including Satellite Business Systems, Southern Pacific Communications and American Satellite, are seeking to establish overseas operations.

Third, the structure of the international non-voice communications market is changing. AT&T has been granted authority by the FCC to provide Dataphone service over its international public switched voice network. Western Union, with its long-standing domestic record communications monopoly, is poised to enter the international record communications market as a result of the Record Carrier Competition Act of 1981 (RCCA). The FCC is now in the process of implementing the ground rules contemplated by the RCCA.

Fourth, the annual growth rate of telex, which has been the mainstay of our business in recent years, has been declining.

Customers and competitors will be adjusting to these changes over the next several years.

The unique features of the international record communications market—notably its small size, its existing, vigorously competitive environment and its dynamic character—dictate that restraint be exercised before imposing major change. There are two main reasons for deferring international communications legislation at this time:

First, a reasonable period of time should be allowed for the carriers and their customers to adjust to the changes called for in the Record Carrier Competition Act of 1981 before considering additional legislation. Careful study of the effect of these recent initiatives should precede further legislative action.

Second, to preserve existing competition and encourage new entrants, AT&T and Comsat must not be allowed to expand from their monopoly bases into the international non-voice communications market without necessary safeguards. Their entry could stifle competition and make necessary even tighter regulation in the future.

I would now like to address specific provisions of the bill.

I. LEGISLATION MUST PROVIDE SAFEGUARDS AGAINST AT&T AND COMSAT ENTRY INTO THE COMPETITIVE MARKETPLACE

The international record communications industry is basically healthy. Its existing competitive structure has benefited the public. There is little dispute that the United States now has an innovative, technologically advanced international telecommunications industry which provides a grade of service equal to or exceeding that available anywhere else in the world. It is further undisputed that new technology and competitive incentives have combined to produce cost savings to users of international communications services.

Given these circumstances, we question whether the competitive rules should be changed to permit virtually unchecked entry into the market by monopoly carriers such as AT&T and Comsat. Such action would not create an environment in which the pro-competitive goals of the bill would be realized. To the contrary, allowing telecommunications monopolies such as AT&T and Comsat to enter generally into already competitive markets could create a climate where competition by other carriers would be impossible. The end result will be diminished competitive opportunity, fewer service choices to the public and increased regulation. These likely results are not in the public interest.

A. AT&T must be prohibited from expanding into the international record market.—AT&T poses a special problem. It is the largest corporation in the world and dominates the domestic and international voice communications markets. In addition, while AT&T and the Justice Department have agreed on the need to spin off AT&T's domestic local exchange operating companies from Western Electric, Bell Laboratories and the Long Lines Department, the proposed settlement does not address AT&T's monopoly over the international voice market. Relying on its monopoly base, AT&T could eventually dominate the entire international telecommunications market if it were allowed to provide international record communications service without restriction.

Since 1964, with the exception of certain grandfathered government private-line service, AT&T has not been allowed to offer non-voice communications generally in the international communications market. This is the result of the FCC's *TAT-4 Decision.*[2] The Commission there determined that the promotion of fair competition required that AT&T not be authorized to provide additional leased alternate voice-data services to overseas points. As a consequence of the competitive environment created, the public has received substantial benefit in terms of service innovation, carrier responsiveness and significantly lower charges.[3]

We believe that, consistent with the general pro-competitive objectives of the bill, there is good reason to continue to limit AT&T's involvement in the overseas record communications market.

AT&T has control of essential communications facilities and as such has unique advantages. For example:

AT&T has a monopoly on all overseas telephone service originating or terminating in the continental United States, and AT&T's revenues from overseas telephone service alone are approximately double those of the entire competitive international record carrier industry.

AT&T owns about 85–90% of the U.S. share in all transoceanic telecommunications cable systems landing in the United States and 100% of the domestic connecting facilities, which extend those cable systems into the major population centers.

AT&T uses nearly 90% of the international satellite circuits leased by Comsat, and AT&T's Comstar satellite system is the only domestic U.S. satellite system presently providing general telecommunications services to Hawaii and Puerto Rico.

A recent independent study commissioned by the National Telecommunications and Information Administration of the Department of Commerce (NTIA) in connection with FCC C.C. Docket No. 80–632,[4] reached the conclusion that AT&T general entry into international record communications would likely pose a major threat to future competition. As stated in NTIA's Study:

"[T]he long-term effect of unlimited [AT&T] entry as envisioned in the TAT-4 NPRM could be disasterous [sic] to competition in international telecommunications services." [5]

The NTIA Study noted that "the odds are" that the international communications industry "could feasibly become controlled by either a single entity—AT&T or by a duopoly of AT&T and COMSAT." [6]

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[2] American Telephone & Telegraph Co., 37 FCC 1151, 1158 (1964).

[3] A decade after the TAT-4 Decision, the FCC found that competition among the international record carriers had driven leased channel rates to a point where the carriers were earning subnormal returns. Leased Channel Rates for International Services, 45 FCC 2d 755, 756 (1974). These findings were confirmed six years later in the International Rate Audit proceeding. International Carriers' Rates, 75 FCC 2d 726 (1980).

[4] Overseas Communications Services, 84 FCC 2d 622 (1980).

[5] "Competition and De-Regulation in International Telecommunications," Vol. I, p. 5-12 (hereafter "NTIS Study").

[6] NTIA Study, pp. 16, 6-7.

The FCC, however, has allowed AT&T to provide Dataphone service to overseas points. That decision gives AT&T an advantage because of the company's monopoly of international telephone service and the preferential terms of, interconnection between AT&T's domestic facilities and its international network. By contrast, our ability to gain the same access to customers in the United States is restricted by the lack of dialing and operational parity with AT&T's services.[7]

There is therefore a very substantial risk that AT&T overseas expansion into record communications will severely limit competitive sources of supply and competitively-priced services in this market. This risk, we submit, outweighs any possible advantage to the user which could reasonably be expected to result from expanded AT&T overseas market entry at this time.

If AT&T obtained overseas record authority, in addition to its voice monopoly, there is also the concern that there would be a tendency for foreign correspondents to turn over all of their business—both voice and record—to AT&T to avoid the need for dealing with multiple U.S. carriers.

These concerns are not addressed adequately in the proposed legislation.

We note the difficulty which the FCC has had in the past in regulating AT&T. The bill's requirement that AT&T establish an independent, separate subsidiary to provide overseas record services does not remove these concerns.[8] AT&T will still be uniquely situated to dominate the total international telecommunications market because of its size and control over essential facilities. Thus, AT&T's entry will likely have an adverse affect on competition and is not needed to assure the public of service. Consequently, AT&T should continue to be restricted from offering record communications services to overseas points while it is overwhelmingly dominant in international voice communications.

B. Comsat's entry into the retail market would eliminate competition unless accompanied by pro-competitive safeguards.—In recognition of the monopoly given to Comsat by the 1962 Satellite Act, Congress intended that Comsat and the telecommunications carriers would not compete in the same market, *i.e.*, Comsat would provide facilities to the carriers and the carriers would serve the public. This concept of a "carrier's carrier" was formalized in the FCC's 1966 "Authorized User" decision. There the FCC stated:

"In reaching our basic policy determinations we are aware that in this instance we are not confronted by a normal competitive situation; namely, one where one entity through its initiative, ability, or inventiveness produces a cheaper or better means of providing service and thus captures a market. Instead, we have a situation where there is an artificial restraint upon the terrestrial carriers. They cannot ordinarily be licensed to provide the essential space segment of the international satellite circuits and thus compete with Comsat on equal terms, but must rely on Comsat which was created to provide these facilities to them. Sound policy indicates that, absent a statutory requirement to the contrary, that they should not be required to depend solely on Comsat for satellite circuits while Comsat is simultaneously allowed to siphon the most profitable part of the business from them." [9]

These considerations are equally valid today. Comsat has prospered. The INTELSAT system is effectively providing service world-wide. There is no demonstrated economic need or policy reason for allowing Comsat to provide satellite service directly to the public while the other carriers continue to be under the same "artificial restraint."

Allowing Comsat to expand from a monopoly base would clearly not serve the objectives of the bill. Rather, the creation of such an industry structure would bring with it real dangers to the maintenance of a competitive market. Comsat is the monopoly provider of satellite facilities for both international and maritime services. It further enjoys special privileges as a quasi-governmental entity created pursuant to an Act of Congress.

Various Congressional and FCC proceedings have made clear that Comsat's primary mission is to discharge its responsibilities as the U.S. representative in INTELSAT and INMARSAT. Appropriate steps should be taken to assure that this mission is fulfilled. Certainly, these functions should take precedence over Comsat's involvement in the commercial sector of the communications market, which is already being well served by the common carriers.

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[7] While some improvements in interconnection with AT&T have recently been obtained after years of litigation, it will be some time, perhaps five years or longer, before we may expect to have anything approximating "parity" of interconnection with AT&T facilities. Substantial open questions also remain as to the costs of such an interconnection and how they should be allocated among AT&T and the other carriers.

[8] The Comptroller General concluded in his September 24, 1981 report to the Congress on domestic telecommunications that the separate subsidiary device is relatively untested and is not "a panacea, a cure-all, or a self-sufficient solution to the problem of monopoly power and its abuse."

[9] *Authorized Entities and Users*, 4 FCC 2d 421, 431 (1966).

More to the point, if Comsat is to act both as a wholesaler and a retailer, legislation must allow the international carriers to compete with Comsat on a relatively equal footing. This requires authorizing the international carriers to acquire space segment and earth station facilities on economic terms equivalent to those which comsat receives. Competitive ownership and operation of these facilities would serve as a spur to Comsat to keep costs down as well as to provide the public with meaningful service alternatives.

Comsat must not be allowed to derive a commercial advantage from its unique access to INTELSAT and guaranteed monopoly earnings. This can only be done if all carriers obtain cost-based access to the INTELSAT space segment and the right to build their own international earth stations. Without equivalent access to both space and earth segments, the end result would be the establishment of monopoly conditions in place of existing competition for international retail satellite services.

Allowing international carriers to obtain cost-based access to international satellite facilities will serve the pro-competitive objectives of S. 2469. Comsat has said repeatedly that it will not lease to the international carriers space segment separate from ground facilities. This illegal tying, if perpetuated, will make it impossible for the carriers to compete with comsat in the provision of earth station facilities accessing INTELSAT satellites. In addition, as has been documented in the FCC's Hawaii/Guam 1.544 Mbps proceedings and elsewhere, Comsat in the past has used profits from its INTELSAT monopoly to cross-subsidize services that it offers in competition with the international carriers. This sort of action thwarts competition.

As with AT&T, the mere creation of a separate subsidiary would not prevent cross-subsidization between Comsat's wholesale and retail functions. Indeed, more regulation, rather than less, could be required to monitor the Comsat parent-subsidiary relationship. As a practical matter, it is unlikely that even such a new layer of regulation would solve the problem. Thus, if a change in the status of Comsat is to be made, Comsat's monopoly position must be terminated at the same time.

In Appendix A, we summarize in more detail the safeguards that are needed to preserve competition if Comsat is allowed into the market.

II. OTHER PROVISIONS OF THE BILL REQUIRE CLARIFICATION OR MODIFICATION

As noted above, RCA Globcom's principal concern is that S. 2469 would allow AT&T and Comsat into the international record services market on terms which could irreparably damage the competitive structure of the industry. These two monopoly carriers enjoy unique advantages over other carriers. Such advantages cannot be offset merely by imposing loose separate subsidiary requirements as a condition for entry into competitive markets.

Other provisions of the bill, in our judgment, also need to be clarified or modified to accomplish the purposes of the legislation.

A. *Classification of carriers.*—Section 607(b) of S. 2469 defines a dominant carrier to be: any carrier which is dominant in the provision of regulated international telecommunications services in a substantial percentage of the total number of markets or submarkets for international telecommunications services.

Dominant carriers are subject to separate subsidiary requirements when they furnish unregulated international telecommunications facilities and services, as provided in sections 620 and 621 of the bill.

It should be made clear that only carriers which have monopoly bases and control over essential facilities such as AT&T and Comsat, and Western Union while it enjoys dominance in domestic record communications, may be classified as dominant carriers by the FCC. There should be no room for misinterpretation of this point and no ability to place in the dominant carrier classification other carriers which are not in monopoly positions and do not have the ability to use monopoly earnings to cross-subsidize competitive offerings.

The international record communications market is characterized today by substantial competitive activities and declining rates. No international record carrier dominates any sector of the market. The FCC has found that the international record carriers earn inadequate returns on virtually all their services other than telex.[10] This is due to the highly competitive conditions which exist at present.

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[10] Leased Channel Rates For International Services, 45 FCC 2d 755, 756 (1974); International Carriers' Rates, 75 FCC 2d 726 (1980); Audit Report in FCC Docket No. 20778.

The RCCA and recent actions of the FCC will serve to increase further existing competition. However, if the Congress refrains from regulating the resellers and, at the same time, regulates the international record carriers to the same degree as AT&T and Comsat, this will deny us a fair opportunity to compete. The important point is that all non-monopoly carriers should be treated the same.

B. Fully Separated Affiliate.—The fully separated affiliate provisions in section 620 of S. 2469 apply to dominant carriers. These provisions presumably are intended to safeguard against anti-competitive behavior by AT&T and Comsat. The legislation must therefore be written with these two entities in mind.

In our view, the loose separation requirements in section 620 of the bill are inadequate to guard against cross-subsidies between regulated and unregulated services; furnished by a dominant carrier; and unfair advantages derived from providing technical information to the managers of unregulated services before such information is made available to other carriers. Indeed, sections 606(d) and 621(a) of the bill, which authorize a dominant carrier to direct the operations of affiliates in competitive markets, could be interpreted to sanction discriminatory conduct.

If the Subcommittee intends to use separate subsidiary requirements as a means to protect against anticompetitive abuse by dominant carriers such as AT&T and Comsat, the legislation must be strengthened. It should, at a minimum, require that (1) the dominant carrier provide all services to the fully separated affiliate under tariff; (2) the fully separated affiliate be responsible for its own research, manufacturing, administration and marketing; and (3) the dominant carrier not share technical or planning information with the fully separated affiliate in advance of making this information available to other carriers. These requirements parallel separate subsidiary provisions in pending domestic telecommunications legislation, as well as recommendations made to the Congress by the Comptroller General in September 1981.

In addition, to curb effectively the monopoly advantages that AT&T will continue to enjoy, we believe that there is a continuing need—even after the local exchange companies are divested—for: (1) separation of AT&T's domestic and international services from each other and from its unregulated competitive services; and (2) the furnishing by AT&T of interconnection facilities which are both (A) equal in type and quality and (B) provided at the same rates and upon the same terms and conditions as those given to any other entity, including AT&T itself or its affiliates.

Certainly, AT&T should not be permitted to offer overseas record communications on conditions which are different and less burdensome than those imposed on the international record carriers under the RCCA.

C. *Tariff Requirements.*—While the tariff requirements proposed in the bill are adequate for non-dominant carriers, stricter requirements need to be applied to dominant carriers in order to protect ratepayers. Section 613 of the bill should require that dominant carriers must cost justify charges for their regulated services. The bill should also authorize the FCC to suspend tariff modifications proposed by a dominant carrier while they are under investigation. Without these conditions, which have been included in S. 898, the FCC could lack the necessary tools to ensure that captive ratepayers are not forced to cross-subsidize a dominant carrier's entry into competitive markets.

D. *Resale and Shared Use.*—With respect to resale and shared use practices, significant differences exist between international and domestic services which should be considered. The role of our foreign correspondents, without whose cooperation there cannot be effective international telecommunications service, is crucial. Their laws and policies should be taken into account.

This question warrants further study and discussion with the concerned overseas administrations before legislation is adopted. We believe that such discussions will be helpful and could lead to a mutually satisfactory solution to this complex issue.

E. *Interconnection.*—Section 610 of the bill contains interconnection requirements for regulated services. We believe that the legislation should be modified to extend to all international carriers—both voice and non-voice—the pro-competitive concept that is in the RCCA. The RCCA states that every international record carrier must interconnect the domestic and overseas segments of its network with other carriers on the same terms as the international record carriers interconnect these segments to one another in providing end-to-end service. The purpose of this provision is to promote inter-carrier interconnection on fair terms and to provide customers with additional service options. This same requirement should be imposed on all carriers that provide international non-voice service, including AT&T—not merely on the competitive international record carriers.

We also believe that the public interest would be ill-served by allowing non-carrier entities to interconnect their systems at cableheads or earth stations. Were such arrangements to be permitted, only the largest users could take advantage of them. The resulting diversion of revenue from the common carriers would create additional pressures for rate increases that would have to be borne by the remaining smaller users, who can least afford additional payments for the maintenance of present services. The public interest would be better served by continuing the present policy which gives the same treatment to all users—large and small.

F. *International facilities planning.*—Certain provisions of S. 2469 on international planning are laudable and we support them. In Title I, section 617 authorizes the FCC to develop guidelines to aid in facilities planning and to consult with carriers and foreign entities. In title III, section 306 directs the Secretary of State to select private sector representatives for delegations to international telecommunications conferences.

Title II of the bill concerns us, however. It appears to envision creating an additional layer of administration in government and shifting international telecommunications policy and planning away from the FCC and affected carriers. The Task Force established in section 203 of S. 2469 has a broad mandate to coordinate the policies of all federal agencies involving international telecommunications and information. This represents a change in the locus of responsibility for planning that may be ill-advised, in view of the way planning is conducted abroad and in the United States.

In most countries, international communications is a responsibility of specialized government agencies, not the foreign ministry. In view of this pattern, and because of the technical nature of the subject, we believe the interests of the U.S. would be best served if the FCC holds primary responsibility for overseas telecommunications policy representing the U.S. Government. In this role, the Commission should undertake appropriate prior consultation with the Executive Branch of the government and other interested government agencies.

Under existing legislation, the FCC is charged with responsibility for regulation of most matters pertaining to foreign communications. Centralization of this function in one agency, whose expertise lies in this area, will tend to expedite decisionmaking and policy formulation. It will also minimize the possibility of conflicting interpretations and divergent rulings on major issues. The FCC provides the most convenient forum for the airing of views on important public questions and permits full participation by the public and the industry in the decisionmaking process.

However, it should be recognized that the Government's role should be limited to policy formulation. Specific facility planning and operating matters, under the basic governmental policies, have been traditionally and more efficiently handled by private enterprise and should remain the responsibility of the carriers.

In addition, two basic flaws in the planning process should be corrected.

First, the FCC still requires the U.S. international carriers to use a specific mix of satellite and cable facilities, regardless of operating requirements, the needs of customers, or the desires of the foreign administrations which jointly invest in the facilities and participate with the U.S. carriers in the provision of service. This policy stems from the mandate of the communications Satellite Act of 1962 to encourage the development of INTELSAT and new technologies. INTELSAT and Comsat are now mature and solvent organizations.

We believe the FCC should return to its accepted regulatory role in authorizing facilities. Its primary attention should focus on the need to assure adequate diversity, redundancy, efficiency and economy. The FCC should not be involved in detailed discussions between the international carriers and their overseas correspondents as to the exact mix of satellite and cable facilities to be used with a particular country or region.

Second, the FCC in the past has not exercised the same degree of control over satellite facility planning as it has with cable facilities. The INTELSAT organization, through its members, determines when a new satellite system will be placed in service. Although the U.S. alone or with some of its supporters might delay approval, no meaningful attempt has been made by the FCC to issue or implement instructions to that effect. Thus, the only "issue" on the table for discussion in past "planning" dockets was the timing of the introduction of, and restrictions to apply to, cable facilities landing in the U.S. or proposed for use by U.S. carriers.

The FCC's role should be limited to setting general guidelines in advance for the planning and use of future facilities for *both* cable and satellite. Neither the FCC nor other government agencies should become involved as direct participants in the negotiation of facility arrangements or the subsequent management of these facilities.

CONCLUSION

RCA Globcom believes that an environment conducive to full and fair competition will foster a financially healthy international record telecommunications industry and benefit the public.

AT&T and Comsat must not be allowed to exercise their monopoly power in the international record communications market to the detriment of existing competition. It would be unwise and dangerous to permit entities providing protected monopoly service to encroach indiscriminately upon a limited market which is already competitive.

Moreover, comprehensive legislation should not be enacted until the marketplace has held an opportunity to adjust to recent Congressional, judicial and regulatory activities. The RCCA, enacted only six months ago, promises to have a significant impact on all carriers providing international record service. It has removed the statutory bar to Western Union's entry and established a process leading to full interconnection among carriers. The effect of other changes industry structure and the competitive environment must also be weighed.

Until these developments are reflected in the marketplace, further change should be witheld. Certainly, a change as potentially far-reaching as redefining AT&T's role in overseas communications should await the outcome of current legislative efforts addressed to the AT&T domestic monopoly and the Government's antitrust proceeding against AT&T.

Legislation must contain safeguards to ensure meaningful competition. This will make possible the resources and the incentive for innovative, technologically advanced and cost-effective service.

Thank you for allowing me to share with the members of the Subcommittee our point of view on the complex issues before you. We welcome your continuing interest in how best to promote a strong, competitive industry and are prepared to work with you and the Subcommittee staff to achieve that objective.

APPENDIX A

COST-BASED ACCESS TO INTERNATIONAL SATELLITE FACILITIES SHOULD BE PROVIDED IF COMSAT ENTERS THE RETAIL MARKET

Congress gave Comsat its present U.S. monopoly over access to the international satellite system with the understanding that fair terms of competition required that Comsat not offer service directly to the public, except in unique circumstances. This concept of a "carriers' carrier" was formalized in the FCC's "Authorized User" decision. There the FCC stated:

". . . in this instance we are not confronted by a normal competitive situation. . . . Instead, we have a situation where there is a n artificial restraint upon the terrestrial carriers. They cannot ordinarily be licensed to provide the essential space segment of the international satellite circuits and thus compete with Comsat on equal terms. . . ."[1]

If Comsat is to be permitted to serve end users directly, other common carriers must also be able to obtain economic, operational and informational access to the international satellite system on terms equivalent to those Comsat receives. Such access will further meaningful competition with Comsat's retail satellite communications services. This approach would not adversely affect any existing treaty obligation of the U.S. and has been supported in the past by the Department of Justice,[2] NTIA and the FCC.[3]

Cost-based access means that the other international carriers can obtain satellite facilities—both space segment and earth stations—at a cost equivalent to what Comsat pays for comparable facilities. Cost-based access is a prerequisite to effective and fair competition between Comsat and the international carriers. It will ensure that access to the Comsat-controlled INTELSAT facilities would be equally available at comparable costs to the Comsat retail subsidiary and to unaffiliated carriers competing with that subsidiary.

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[1] Authorized Entities and Users, 4 FCC 2d 421, 431 (1966).

[2] The Department of Justice recommended that the FCC "establish the terms and conditions under which the international carriers may deal directly with Intelsat, paying Comsat only a ministerial fee for any necessary coordination services." Comments in C.C. Docket No. 78-218, dated April 12, 1978, at 13.

[3] The FCC stated: "[T]here may be public benefits which flow from permitting carrier capital acquisition of satellite circuits. One potential benefit could be increased price competition in the provision of the basic satellite channel." Spanish International Network, 70 FCC 2d 2127, 2146 (1978).

Comsat's present cost advantage over the other common carriers constitutes an artificial barrier to full competition. There is no reason to continue it.

HOW COST-BASED ACCESS WOULD WORK

One option could be to authorize the carriers to purchase satellite circuits directly from Comsat, on an indefeasible right-of-user (IRU) basis, similar to the well-established practice of selling IRU interests in transoceanic cable circuits at their net book value.[4] Comsat would also receive a "ministerial fee" to reimburse it for any necessary coordination and maintenance services it might provide, in the same manner as cable maintenance costs are shared on a pro rata basis by all the carriers using the cable.

A second option could be a long-term capital lease. The present value of the lease payments would equal the net book value of the circuit at the time of the inception of the lease, *i.e.*, the same cost as purchasing under the IRU concept. An administrative or maintenance fee could also be assessed to the carriers by Comsat to allow Comsat to recover its ongoing expenses associated with satellite circuit maintenance. The Commission has previously authorized cost-based lease access to the Comstar system for service to Hawaii and Puerto Rico. *See GTE Satellite Corporation*, 49 FCC2d 42, 53 (1974).

Under either of these two options, the cost to the carriers would be less than Comsat's current lease charge, reflecting the long-term nature of the agreements, the sharing of risk between Comsat and the carriers and the continued downward trend in the cost per satellite circuit as satellite technology improves.

Comsat would also continue to make available circuits on a straight lease basis as at present, with its normal markup. Again, this parallels the present situation with respect to transoceanic cable circuits, whereby carriers may eihter commit to a cost participation interest in the facility or lease capacity from the cable owners on an as-needed basis. In this way, competition with Comsat's retail services can be assured, while at the same time making provision so that those needing satellite capacity for various communications purposes can obtain it as requirements develop.

These options would not endanger, alter or diminish Comsat's present role as the sole United States representative to INTELSAT. The sole purpose of the proposals is to help guarantee a competitive marketplace without financially rewarding or punishing either the other carriers or Comsat.

In addition, the carriers must be allowed to acquire and separately provide appropriate international earth station access. This could be accomplished by allowing the carriers both to construct their own separate earth station facilities and to obtain facilities from Comsat under appropriate cost-sharing arrangements. The competitive benefits of independent earth station ownership have been recognized by the Department of Justice, which filed comments in the FCC's CC Docket No. 80-170 in August and October 1980 urging the Commission to permit such independent ownership even if Comsat does not provide retail services.

WHY COST-BASED ACCESS IS NECESSARY

Comsat's monopoly on access to the INTELSAT space segment gives it an enormous competitive advantage over the international carriers. When Comsat leases space segment capacity to a carrier or to an end user, it has already covered all of its overhead attributable to the space segment and has made a profit on the lease. The carriers, on the other hand, were they to compete with Comsat without having cost-based access to INTELSAT, would have to sell the space segment at their cost, *i.e.*, at Comsat's price. This would preclude their recouping any overhead expenses or making any profit. Obviously, were they to sell at a price higher than Comsat's, the carriers would price themselves out of the market. In other words, the international carriers cannot possibly compete with an entity which has a wholesale monopoly when that monopoly entity itself sells to the carrier's customers at the same price that it sells to the carriers.

Comsat has demonstrated that it is not above using its monopoly over INTELSAT space segment capacity to engage in price discrimination and other anti-competitive practices. An illuminating example is the 1.544 mbps Guam/Hawaii service. RCA Globcom, in preparing its own bid to provide the 1.544 mbps service, requested from

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[4] IRU is a form of property interest used in communications. The IRU holder has the same use of a portion of a communications facility as an "owner" of the facility, except the right to participate in management decisions affecting the facility as a whole.

Comsat, as monopoly supplier of INTELSAT space segment, a quotation for service, utilizing Comsat/ESOC Standard B earth stations at Hickam and Finegayan. Comsat quoted RCA Globcom a monthly half circuit price *double* Comsat's charge quoted to the Defense Department for exactly the same service. This anti-competitive, discriminatory pricing by Comsat made it impossible for RCA Globcom to submit a bid competitive with Comsat's bid to DoD.

In the Guam/Hawaii bid, Comsat allocated less than *one-thirteenth* of Comsat's investment in the proposed earth stations to the service being awarded, despite the fact that it was the only service that would definitely use the stations. Comsat, however, was able to cross-subsidize its under-pricing of the earth stations through its monopoly space segment profits. This made it virtually impossible for the international carriers to compete with Comsat for the service.

It must also be noted that such misallocations and cross-subsidizations carry no financial danger to Comsat. Comsat is, for the most part, a monopoly carrier. It has a prescribed overall rate of return for its services. If the rate which it proposes to charge for a competitive service will not itself permit Comsat to recover its full return on the investment related to that service, Comsat can simply make up the difference from the users of its monopoly services. This is because the investment in the competitive service will be included in Comsat's overall rate base on which it earns its prescribed rate of return.

The fairness and common sense of cost-based access have been amply demonstrated. If Comsat is to compete directly with the international carriers in the retail market, that competition should take place on as near an equal basis as feasible.

In sum, we are not asking for here and never have asked for a "free ride" at Comsat's expense. Rather, we seek to establish a basis which will permit fair competition for retail international satellite service on relatively equal economic terms with Comsat.

Senator GOLDWATER. Thank you very much, Mr. Murphy.

Mr. Coleman, you may proceed.

Mr. COLEMAN. Thank you, Mr. Chairman. I, too, would like to have the full text included in the record, if I might.

Senator GOLDWATER. That will be done.

TRT wishes to commend the committee and its staff for conducting this inquiry, and we would like to recommend several modifications to S. 2469 which we believe will insure that small entrepreneurial companies such as TRT can continue to compete with A.T. & T., Comsat, and the other telecommunications companies:

The IRC industry is unique in that, unlike the provision of domestic telecommunications and international message telephone service, IRC services have historically been provided on a competitive basis. In providing these services, however, the IRC's must utilize facilities under the control of A.T. & T. and Comsat.

This competitive environment has already been altered substantially by the pending entry of Western Union. Even with the interconnection arrangements of the Record Carrier Competition Act, the IRC will soon face a substantial adjustment. Competition will be even more dramatically affected by the adoption of proposals to introduce, without structural safeguards, monopoly based carriers such as A.T. & T. and Comsat as providers of international record services.

Perhaps the greatest threat to the competitive provision of international record services is the entry of A.T. & T. into this market. A.T. & T.'s power to dominate all forms of international telecommunications is significantly greater than even its generally recognized ability to dominate domestic telecommunications. A.T. & T.'s monopoly international message telephone service is by far the predominant international telecommunications service, whether measured in terms of revenue, profits, or facility utilization.

The ICR's must rely on A.T. & T.'s monopoly controlled services and facilities to provide their services. This reliance is multifaceted. Just as in the case of the domestic specialized carriers, IRC's must rely on access to A.T. & T.'s monopoly local distribution facilities to reach their directly served customers. More importantly, A.T. & T. also serves as a bottleneck overseas. As the monopoly provider of IMTS, A.T. & T. is the dominant U.S. partner in the submarine cable consortiums and would have the potential to restrict IRC access to these facilities. A.T. & T. also controls the transmission facilities required by the IRC's to access cableheads and satellite Earth stations.

Although A.T. & T. has both the incentive and the opportunity to enter and dominate the international data market, the IRC's are as a practical matter restricted from the international voice market. A.T. & T.'s monopoly position is entrenched through its special relationships with the foreign telecommunications administrations. Unlike domestic specialized carriers, the IRC's do not have the alternative to build their own transmission facilities.

As the monopoly provider of IMTS, A.T. & T.'s importance to the foreign administrations completely overshadows the importance of all the IRC's combined. Thus, in the context of negotiations by foreign administrations with several U.S. carriers, a concession by A.T. & T. with respect to its voice accounting rates or a landing point or manufacture of the next submarine cable, for example, would outweigh any concession that the IRC's could offer. A.T. & T. would thus be able to use its IMTS-based leverage with the foreign administrations to obtain an overwhelming advantage in the provision of record and data services.

Because of A.T. & T.'s unique and pervasively dominant role in international telecommunications, it is unlikely that competition in the international record services market can continue with anything less than the complete exclusion of A.T. & T. from this market. The only mechanism by which A.T. & T. should be able to enter the international record services market is through the creation of an international operating company, IOC, thereby divesting A.T. & T.'s international facilities and its IMTS into a separate and unaffiliated company. This proposal is analogous to the division of the monopoly Bell operating companies, BOC's, from competitive portions of A.T. & T. The IOC would be confined to the monopoly provision of IMTS in the same manner as the BOC's are limited to the provision of exchange service. Similarly, the remaining portion of A.T. & T. would be able to provide competitive international services, like the other carriers.

Since A.T. & T.'s control of IMTS is as much a bottleneck as the BOC's control of the local loop, and since there is no competition to IMTS, divestiture would be justified in exchange for permitting the soon to be divested A.T. & T. to engage in competitive international activities. Moreover, the provision of services, facilities, and interconnection facilities by this carrier must be on terms and conditions that are available on a nondiscriminatory basis to nonaffiliated competitors.

The entry of Comsat in the IRC market represents a similar threat to the existence of competition. The Communications Satellite Act of 1962 accords Comsat a monopoly in the provision of the communication satellite channels needed by the IRC's to provide their services to the public. Many countries can be reached only by satellite. Moreover, satellites currently provide the only practical medium for a number of record services such as wide-band data transmission.

In our view, fair competition between Comsat and the IRC's is not possible so long as Comsat retains its position as a monopoly supplier of satellite facilities to other carriers. Permitting Comsat to provide services to end users would not result in additional competition, but would in fact be detrimental to existing competition.

The creation of a separate subsidiary within Comsat to conduct these competitive services will provide little competition protection. As the Commission itself recognized in the Comsat inquiry, a separate subsidiary will not prevent Comsat from engaging in anticompetitive activities.

We believe that a separate subsidiary is an illusionary safeguard. The incentives of the separate subsidiary's management would be indistinguishable from any ordinary division of Comsat. If, nevertheless, the committee believes that Comsat should provide record service, we urge the committee to at a minimum provide satellite facilities to the IRC's through Comsat at a nonprofit cost flow-through lease or indefeasible right of user basis.

Mr. Chairman, I will suspend at this point and note that we do include in the remainder of our testimony recommendations that relate to earlier language in other Senate bills which we do endorse and recommend that you include in this legislation.

Thank you very much for this opportunity.

[The statement follows.]

STATEMENT OF DAVID LUBETZKY ON BEHALF OF TRT TELECOMMUNICATIONS CORP.

Mr. Chairman and members of the subcommittee, my name is David Lubetzky. I am president and chief executive officer of TRT Telecommunications Corporation. I appreciate the opportuntiy to share with you the views of TRT regarding S. 2469, the international Telecommunications Deregulation Act of 1982. TRT wishes to commend the committee and its staff for conducting this inquiry. Consistent, however, with the bill's competitive objective and the chairman's stated desire to enact comprehensive legislation, we recommend several modifications to the bill which will ensure that small entrepreneurial compaines, such as TRT, can continue to compete with AT&T, Comsat and other telecommunications conglomerates.

TRT is one of several competitive international record carriers (IRCs). Although TRT is a small carrier in comparison to its three much larger competitors (ITT, RCA, WUI/MCI), it has created substantial benefits to the public in the form of rate reductions and improved service.

The IRC industry is unique in that, unlike the provision of domestic telecommunications and international message telephone service (IMTS), IRC services have historically been provided on a competitive basis. In providing these service, however, the IRCs must utilize facilities under the control of AT&T and Comsat. Despite the IRCs' reliance on these carriers, competition in the provision of IRC services is as vigorous as any in the telecommunications industry.

Principally because those carriers who dominate the control of international facilities have historically been excluded from the international record market by legislation and regulatory policies, no IRC has been in the position to deny facilities or foreclose markets to its competitors. Moreover, the economic barriers to entry in the IRC market are relatively low, permitting small carriers to compete successfully and provide a competitive spur to the larger entrenched carriers to improve services and reduce rates. This competitive environment has already been altered substantially by the pending entry of Western Union. Even with the interconnection arrangements of the Record Carrier Competiton Act of 1981. The IRC industry will soon face a substantial adjustment. Competition will be even more dramatically affected by the adoption of proposals to introduce, without structural safeguards, monopoly-based carriers, such as AT&T and Comsat, as providers of international record services.

Perhaps the greatest threat to the competitive provision of international record services is the entry of AT&T into this market. AT&T's power to dominate all forms of international telecommunications is significantly greater than even its generally recognized ability to dominate domestic telecommunications. AT&T's monopoly international message telephone service is by far the predominant international telecommunications service, whether measured in terms of revenue, profits or facility utilization.

The IRCs must rely on AT&T's monopoly controlled services and facilities to provide their services. This reliance is multifaceted. Just as in the case of the domestic specialized carriers, IRCs must rely on access to AT&T's monopoly local distribution facilities to reach their directly served customers. More importantly, AT&T also serves as a bottleneck overseas. As the monopoly provider of IMTS, AT&T is the dominant U.S. "partner" in the submarine cable consortiums and would have the potential to restrict IRC access to these facilities. AT&T also controls the transmission facilities required by the IRCs to access cableheads and satellite earth stations.

Although AT&T has both the incentive and opportunity to enter and dominate the international data market, the IRCs are, as a practical matter, restricted from the international voice market. AT&T's monopoly position is entrenched through its special relationship with the foreign telecommunications administrations. Unlike domestic specialized carriers, the IRCs do not have the alternative to build their own transmission facilities overseas. The IRCs would have to obtain prior agreement from these foreign administrations to construct separate transmission facilities in order to circumvent AT&T dominated facilities. Since the construction of separate IRC overseas transmission facilities would create operating complexities and increased costs to the foreign administrations, it is almost certain that they would preclude the IRCs from constructing separate facilities.

As the monopoly provider of IMTS, AT&T's importance to the foreign administrations completely overshadows the importance of all the IRCs combined. Thus, in the context of negotiations by foreign administrations with several U.S. carriers, a concession by AT&T with respect to IMTS accounting rates or a landing point or manufacture of the next submarine cable, for example, would outweigh any concession that the IRCs could offer. AT&T would thus be able to use its IMTS-based leverage with the foreign administrations to obtain an overhwelming advantage in the provision of record and data services.

Because of AT&T's unique and pervasively dominant role in international telecommunications, it is unlikely that competition in the international record services market can continue with anything less than the complete exclusion of AT&T from this market. As shown above, the need to restrict AT&T's telecommunications monopoly overseas is a much more compelling situation than restricting AT&T's domestic monopoly. The only mechanism by which AT&T should be able to enter the international record services market is through the creation of an international operating company (IOC) thereby divesting AT&T's international facilities and its IMTS into a separate and unaffiliated company. This proposal is analogous to the division of the monopoly Bell operating companies (BOCs) from competitive portions of AT&T. The IOC would be confined to the monopoly provision of IMTS in the same manner as the BOCs are limited to the provision of exchange service. Similarly, the remaining portion of AT&T would be able to provide competitive international services, like other carriers.

Since AT&T's control of IMTS is as much a bottleneck as the BOCs' control of the local loop, and since there is no competition to IMTS, divestiture would be justified in exchange for permitting the soon to be divested AT&T to engage in competitive international activities. Moreover, the provision or services, facilities and interconnection facilities by this carrier must be on terms and conditions that are available on a nondiscriminatory basis to non-affiliated competitors.

The entry of Comsat in the IRC market represents a similar threat to the existence of competition to that posed by AT&T. The Communications Satellite Act of 1962 accords Comsat a monopoly in the provision of the communications satellite channels needed by the IRCs to provide their services to the public. Many countries can be reached only by satellite. Moreover, satellites currently provide the only practical medium for a number of record services, such as wideband data transmission. In such cases, the IRC's ability to provide these services is under the exclusive control of Comsat.

In our view, fair competition between Comsat and the IRCs is not possible, so long as Comsat retains its position as the monopoly supplier of satellite facilities to other carriers. Permitting Comsat to provide services to end users would not result in additional competition, but would, in fact, be detrimental to existing competition.

Congress correctly created Comsat as a carrier's carrier, not a competitor. In this role, Comsat has a fiduciary duty to the U.S. Government, consumers and the communications industry. Unleashing Comsat into competitive carriage would be contrary to the public interest. Comsat service to end users would severely restrict competition through a series of conflicts of interest, unfair competitive advantages and cross-subsidization.

The creation of a separate subsidiary within Comsat to conduct these competitive services will provide little competitive protection. As the Commission itself has recognized in the Comsat inquiry, a separate subsidiary will not prevent Comsat from engaging in anti-competitive activities.

We believe that a separate subsidiary is an illusory safeguard. The incentives of the separate subsidiary's management would be indistinguishable from any ordinary division of Comsat. The managers of the subsidiary will use every effort to maximize overall firm profits by using Comsat's position in the regulated market to bolster its position in the adjacent unregulated markets. The separate subsidiary approach ignores basic corporate law, management realities, and human nature. It was for these reasons that Professor Louis B. Schwartz of the University of Pennsylvania Law School has characterized the separate subsidiary approach as an "antitrust disaster" and "a fiction [and] contradiction in terms."

If, nevertheless, the committee believes that Comsat should provide record services directly to the public, Congress should require Comsat to transfer its Intelsat/Inmarsat activities to a separate unaffiliated corporation thus precluding Comsat from controlling the facilities over which its competitors must transmit international messages. At a minimum, Comsat should be required to provide satellite facilities to the IRCs at a nonprofit, cost-flow-through lease or indefeasible right of user basis. Comsat's competitors should also be allowed equal access to Intelsat information and the right to participate in the formulation of the United States position within Intelsat.

TRT also supports language contained in earlier Senate draft bills that would deregulate small international carriers. In contrast to large telecommunications conglomerates, small carriers are clearly nondominant and are presently subject to effective competition. Although S. 2469 goes a long way toward lessening FCC regulation over facilities construction permits and tariffs, TRT believes that small ICRs should be considered nondominant and completely deregulated.

Consistent with the deregulatory thrust of this legislation, TRT specifically recommends that the definition of "regulated carrier" should read "any international carrier which has five percent or more of the aggregate revenues derived by all carriers from the provision of international telecommunications service or a figure of 100 million dollars in aggregate revenues." With regard to either of these two measures of dominant carriage, "aggregate revenues" would mean the total revenues paid by the public for telecommunications services after deduction of that portion of the total revenues paid to or retained by other domestic and overseas connecting carriers. Competition in the international record services market will be substantially furthered by deregulating carriers the size of TRT, FTCC, Graphnet, CCI and others. The underlying rationale of title II of the Communications Act is the regulation of monopoly services. This rationale, however, is inappropriate for independent nondominant carriers which rely upon the monopoly facilities of others. Unlike telecommunications conglomerates, small carriers, such as TRT, have no opportunity or incentive to engage in cross-subsidization or other anti-competitive practices.

Thank you for this opportunity to comment on S. 2469 and to share with you TRT's recommendations in support of a competitive international telecommunications environment. We will be pleased to provide this committee with amendments designed to carry out the policy enunciated in this testimony.

Senator GOLDWATER. Thank you very much, Mr. Coleman.

I have a few questions here directed at the panel, and any one of you can answer and the others can make any comments you want to.

The Commission last week uncharacteristically chastised the IRC's for less than forthrightness on the interconnection rate filings under S. 271. Is this the kind of carrier behavior we can look forward to under such model legislation, an apparent effort to thwart the process?

Mr. **Murphy**. Mr. Chairman, insofar as the efforts by RCA were concerned, I do not believe it was valid that its filing should be castigated in the way it was. There were difficulties in terms of coming up with a suitable proposal. The matter is a very complex and difficult one. There have been very extensive meetings and work on this, and indeed I can tell you that there has been extensive weekend work on a very short timetable in order to meet the requirements of the act. There was certainly no intention whatsoever not to comply fully with the requirements of the Commission and the act.

Some of the problems that were raised, I think, are normal type administrative problems, where, in the normal course of two-way communications between the staff and the carriers, would have been resolved. In any event, we are reworking the matter at the present time. We will be filing with the Commission tomorrow, as directed. We feel that certain of the provisions which require us effectively to pay domestic carriers, even though, in the case of outbound transit traffic, we would be out of pocket are unacceptable. We therefore will file under protest with regard to other provisions, but we will comply with the Commission order.

Senator **Goldwater**. Thank you. Do any of you other gentlemen have a comment?

Mr. **White**. Yes; I would say that in general I share the views expressed by Mr. Murphy. I would only add that what one must expect when any new legislation is passed is that there will be a period of interpretations and adjustments and efforts to resolve new problems that are raised. In the particular case cited, the most grievous problem for us has been the Commission's interpretation of the legislation, which actually requires us to provide service without compensation. Indeed, we filed a petition for reconsideration of that decision with the Commission. The Commission has not acted on that petition for reconsideration yet. We note however, that the FCC had short time to act, which was part and parcel of what was required by the legislation. The early deadlines imposed required us to put something in. We did put something in that was designed to leave that particular question open, and the Commission just was not satisfied. They wanted compliance to the letter of their initial ruling, and we will take whatever steps are legally required to do that.

Senator **Goldwater**. Thank you.

Mr. Coleman, do you have any comments?

Mr. **Coleman**. Thank you, Mr. Chairman. It is my understanding that TRT did comply with the Commission's request on all three of the matters mentioned by the FCC Commissioners on Friday. TRT is also filing a tariff tomorrow, and I would like to note that TRT has also sought review by the D.C. Circuit Court of Appeals with regard to the Commission's interpretation of the provision in the record carrier amendments affecting the TRT Western Union provision.

We feel the legislative history in the legislation enacted in the last Congress is very clear.

Senator **Goldwater**. Do you believe that there is overemphasis on reciprocal measures in this bill? Without such measures, what tools does the Commission have to promote competition in international services?

Mr. WHITE. That sounds like a quote from my remarks, so I would start off by trying to follow your earlier admonition to seek agreement with others. I agree with Mr. Nichols' suggestion that a strong procompetition statement should be enough of an inducement and encouragement to the FCC and a sufficient signal to the foreign administrations to accomplish all that could be accomplished, in this time frame. I do believe that there will be movement toward more competition in the various foreign markets as time goes on.

Senator GOLDWATER. Any suggestions you or anyone else have relative to such a statement we would enjoy seeing, because we are probably going to be asked along with the FCC to prepare such a statement for the administration, and it should be a proper one, and strong, in my opinion. Mr. Murphy?

Mr. MURPHY. The only other point I would make here, Mr. Chairman, is that the degree of competition that occurs at the U.S. end is relatively independent of the situation overseas. Again, as Mr. Nichols did point out, the fact is that we do not actually provide service at the foreign end, so communications common carrier services are really quite different from the situation where products are being sold in a foreign market.

Thank you, Mr. Chairman.

Mr. COLEMAN. I agree with Mr. Murphy.

Senator GOLDWATER. I know some of these questions may seem rather far-fetched, but we are watching a rather rapid erosion of the United States in foreign markets, and while there is no question that we have dominated communications for years, there is a very serious question about what the Japanese might be able to do or a combination of European countries or countries that we are not even thinking about. That is why we have seemingly put so much emphasis on what we might be able to do to protect our own domestic companies who are now really getting their feet in it on the international communications. It is hard for anyone to believe that some other country might sneak in. We have watched them sneak into the airplane business, the automobile business, the electronics business relative to communications, so there might be that danger that they could sneak in under the tent with the actual competition of communications.

Do any of you see that happening?

Mr. MURPHY. I do not see it happening in the communications common carrier field in the United States, Senator.

Senator GOLDWATER. Not in the United States. I am talking about internationally. To be able to provide the same type services we can provide now.

Mr. MURPHY. In terms of international services provided by the U.S. common carriers at the present time, I do not see that likely to occur. Indeed, of course, it should be recognized that we have extensive competition at the present time in the international record communications markets already.

Senator GOLDWATER. You stated that it is necessary for carriers to build their own international Earth stations. The bill allows the

FCC to permit such ownership arrangements. Why is this not sufficient?

Mr. MURPHY. Mr. Chairman, from the point of view of competing with the international satellite facilities our concern is that under the bill, Comsat would be authorized to provide retail services. We believe that Comsat cannot have it both ways. We cannot be in a position where Comsat maintains a monopoly on international satellite facilities and at the same time competes directly with carriers who have to obtain those very facilities from Comsat. Comsat is, obviously, in a position that it can price at the wholesale level in such a way as conceivably to subsidize even a separate subsidiary. That is why it is felt that the separate subsidiary is illusory.

In this connection, I think it should be recognized that the Department of Justice has taken the position that the carriers should be authorized direct cost based access to the Intelsat facilities and that they should be entitled to establish their own Earth stations. This does not require, Mr. Chairman, that we have alternative space segment communications systems. The carriers would access the Intelsat space segment, and Comsat would continue with its responsibilities that it now has under the Communications Satellite Act of 1962.

The only change would be, as the Department of Justice has suggested, that the carriers would pay a ministerial type fee in order to gain that access to Intelsat. This would place the carriers in a position that they could compete with Comsat.

Mr. COLEMAN. I agree with Mr. Murphy. I think the problem goes well beyond the question of Earth station ownership, and really goes to what sort of incentives a competitive element of Comsat has that are distinguishable from the parent corporation to maximize profits. If you totally separate the monopoly functions of Comsat, that is, its representation in Intelsat and Inmarsat, leaving you with a competitive company, I am not sure what you gain with that company if you have a separation of the companies. All you have is injecting one more company into the international data market. Whether you accomplish that through Comsat or some other vehicle, I am not sure what you gain.

Thank you very much, gentlemen. That is all for today. We appreciate you coming.

Mr. WHITE. Thank you.

Mr. MURPHY. Thank you.

Mr. COLEMAN. Thank you.

Senator GOLDWATER. Our second panel will be Mr. Robert Conn, executive vice president of Western Union, Mr. Stuart Mathison, vice president, corporate planning, GTE, Mr. Roger Newell, vice president and general counsel, FTC Communications, and Mr. Ronald Stowe, director and assistant general counsel for governmental and international affairs, Satellite Business Systems.

Gentlemen, you may take your seats. As I told the other witnesses, if you care to insert your entire statement in the record, that will be done in the interest of time, and you may proceed in your own way to outline what you have to say. Mr. Conn, you will be first.

STATEMENTS OF ROBERT CONN, EXECUTIVE VICE PRESIDENT, WESTERN UNION INTERNATIONAL, INC.; STUART MATHISON, VICE PRESIDENT, CORPORATE PLANNING, GET, TELENET, INC.; ROGER NEWELL, VICE PRESIDENT AND GENERAL COUNSEL, FTC COMMUNICATIONS, INC.; AND RONALD STOWE, DIRECTOR AND ASSISTANT GENERAL COUNSEL FOR GOVERNMENTAL AND INTERNATIONAL AFFAIRS, SATELLITE BUSINESS SYSTEMS

Mr. CONN. We have prepared a comprehensive and, we hope, well documented and helpful statement, including an actual revision to a portion of your bill. We propose to continue to cooperate to the extent that you will permit us. The goals of S. 2469 are commendable, and WUI is at the service of the subcommittee and its staff to assist in any possible manner to attain these goals.

As more fully explained in our written testimony, successful international telecommunications is founded on international comity and no major unilateral decisions affecting such telecommunications should be taken without consultation with other nations throughout the world through the international organizations established for that purpose.

In the chairman's opening statement yesterday, he declared that the international task force proposed in title II of the bill was "crucial'. We agree.

In a constructive effort we have taken the liberty of slightly revising the task force portion of the bill while retaining all of its essential ingredients. I invite the committee's attention to appendix A to the WUI testimony. Although the Government officials who testified yesterday did not exactly give the task force a ringing endorsement, we hope that our revisions will answer their objections. The task force need not become another bureaucratic layer of Government or another agency to meddle in procurement affairs, as was alleged by yesterday's witnesses. The task force would undertake and complete a study of all the pending issues. After receipt of the task force's recommendations, Congress could then move forward with comprehensive international legislation. The task force would terminate after completion of its assignment under WUI's proposal.

By way of illustration of the need for the task force study, we invite your attention to section 605(a) on page 12 of the proposed bill. This section welcomes foreign entities into the U.S. resale market, largely unregulated, subject to the proviso that U.S. carriers will reciprocally be invited into the home markets of these foreign entities. We would be reluctant to try to enter a foreign market in competition with a PTT who is also our foreign partner. However, the bill seems to force us into this risky competition as a defensive measure against the PTT entering our U.S. market and conceivably dominating both ends of the international circuit. If the PTT's home country shackles us as a competitor there, we would be forced to enter into litigation against that PTT before the FCC. I am sure you will agree that there is already too much regulatory litigation, and we shudder at the international discord that might result.

In any event, we submit that this complex matter should be referred to the task force for study and recommendations.

Another subject for a task force study would be the role of Comsat, a congressionally established monopolist. WUI is not afraid of competition with A.T. & T., Comsat or any other carrier, provided the ground rules promote full and fair competition. We must have the same cost-based access to Intelsat circuits as does Comsat. My company is proud that some 7 or 8 years ago it originated the cost-based access concept in FCC pleadings, and we were quite disappointed that to date there has been no ruling. I hope that when the FCC International Day that was heralded yesterday takes place, this crucial issue will finally be ruled upon. If we cannot get the same cost-based access to the same facility that Comsat would use in competing with us, we would be like a candidate for elective office whose opponent started his competitive campaign with 100,000 votes to his credit.

Put another way, if Comsat quoted wholesale rates to itself and also to WUI for a competitive bid to DOD, for example, that would be analogous to one candidate for elective office having the power to tabulate all the votes. A separate Comsat subsidiary is no answer, because that would be like asking one candidate's sister to count the votes for all the rival candidates, including her brother.

WUI has endeavored through its documented written testimony to be helpful to the committee. As indicated in that testimony, we are now engaged in a comprehensive section-by-section analysis. We shall make that analysis available to the subcommittee staff. I thank you, and I invite your questions when my turn comes.

[The statement follows:]

STATEMENT OF ROBERT E. CONN, EXECUTIVE VICE PRESIDENT, WESTERN UNION INTERNATIONAL, INC. (WUI)

Mr. Chairman and members of the Subcommittee, I am Robert E. Conn, Executive Vice President of Western Union International, Inc. (WUI), one of the major international record carriers. I direct WUI's legal, regulatory and legislative affairs.

When Senator Goldwater introduced S. 2469 on May 3, 1982, he stated that he expected "this bill to provoke extensive debate" and that these hearings will "be the forum for the debate." This testimony is submitted in that spirit, and we hope that it will be helpful to the Subcommittee.

In brief, WUI submits:

1. The goals of S. 2469 are commendable, and WUI is at the service of the Subcommittee and its Staff to assist in any possible manner to attain these goals.
2. Successful international telecommunications is founded upon international comity, and no major unilateral decisions affecting such telecommunications (legislative, regulatory or otherwise) should be taken without consultation with other nations through the international organizations established for that purpose.
3. The International Telecommunications and Information Task Force in the executive branch of the Government, as wisely contemplated by S. 2469, should fulfill its assignment to study national goals and to recommend specific policies and strategies to the President and the Congress prior to the enactment of any comprehensive legislation. The Task Force should also interact with the international community and then recommend, to the President and the Congress, strategies designed to promote international comity and successful international telecommunications. This approach should ensure the efficient coordination of international legislation by Congress with effective representation by the executive branch of U.S. interests in the international arena.
4. Premature deregulation of the international marketplace would be unwise. S. 2469 sets a fast pace for deregulation without regard for the status of competition; and, consequently, might enable the monopoly-based U.S. carriers, such as AT&T and Comsat, to further entrench their dominance to the detriment of full and fair

competition. An unregulated "fully separated affiliate" of a dominant carrier, as contemplated by S. 2469, would be an ineffectual safeguard against market entrenchment by that dominant carrier.

5. Resale and shared use of international services and facilities, largely unregulated, would be at odds with international comity and CCITT policies. The bill's invitation to foreign telecommunications entities to enter the U.S. resale marketplace is questionable, and could lead to foreign domination of both the U.S. and foreign ends of communications routes. The bill's insistence upon foreign reciprocity for U.S. international carriers might not be effective, and could provoke international discord.

6. S. 2469 would make Comsat (a Government-established monopolist) eligible to compete in the international retail market against less advantaged private sector carriers. However, the bill fails to clearly establish the right of these carriers to acquire satellite circuits on a cost basis equivalent to that enjoyed by Comsat. Therefore, S. 2469 might facilitate the expansion of Comsat's wholesale satellite monopoly into the retail sector to the detriment of competition.

I.—Successful international telecommunications is founded upon international comity: International telecommunications is a much more difficult subject for legislation than is domestic telecommunications. Domestic telecommunications is wholly jurisdictional, and legislative changes do not necessarily have global effect. However, the U.S. has only partial jurisdiction over international telecommunications, and legislation in this field clearly has world-wide impact.

International comity is the linchpin of the international telecommunications network. This global network may be analogized to a gigantic, intricate machine whose mutually-dependent components operate within the boundaries of over 200 nations. These national components are interconnected, intercontinentally, but multinationally-owned and operated submarine cable and communications satellite systems. Communications traffic flows between the nations of the world, either directly, or indirectly by transiting third nations. Although a direct route is preferable, assuming it is warranted by sufficient traffic volume, transit routes are routinely used for overflow traffic caused by unusually heavy volumes or by technical interruptions to the prime route.

International telecommunications is so vitally interrelated, nation-to-nation, that heartburn in one major national traffic center can lead to global indigestion.

The global network can be adversely affected by non-technical difficulties as well, such as when one nation seeks to make unilateral decisions that will have extraterritorial impact. However, there are international instrumentalities in place which, for the most part, obviate disruptive, unilateral decision-making. These instrumentalities include the CCITT, regional facilities-planning organizations, Intelsat, Inmarsat, and unstructured consultations between individual operating entities.

There have been two disruptions, emanating from the U.S., which will illustrate how harmonious international cooperation can be adversely impacted to the detriment of international telecommunications. In 1980, the FCC issued a rulemaking proposal looking towards mandatory resale and shared used of international facilities and services. In 1976, the FCC refused to allow the U.S. carriers to open submarine cable circuits with their foreign counterparts until a certain mix of cable and satellite circuits was attained.

The overseas administrations were particularly embittered because these unilateral FCC actions were taken contrary to prior international agreements. In response to the 1976 episode, European administrations embargoed the opening of any transatlantic circuits; in response to the 1980 episode, many administrations throughout the world threatened to terminate international private line service to the U.S. These episodes are so instructive that they will be referred to later during this testimony.

Successful international telecommunications is uniquely founded upon international comity. In the international air and shipping industries, for example, although international cooperation and landing rights are required, a single nation's planes and ships transport traffic throughout the entire journey, country-to-country. In international telecommunications, however, each nation operates only half of the transport, and the traffic is handed off in mid-ocean, figuaratively speaking. Only in the international telecommunications sector are the nations so mutually dependent upon one another.

II.—International task force should fulfill its assignment prior to enactment of comprehensive legislation; Although the International Telecommunications and Information Coordination Act of 1982, with its task force within the executive branch, does not appear until page 51 of the 67-page S. 2469, logically it should come first. The establishment of this task force is an excellent idea, and it should ensure the efficient coordination of international legislation by Congress with more effective representation by the executive branch of U.S. interests abroad.

The earlier portion of S. 2469 provides for major changes in the way international telecommunications are regulated. Essentially, there will be deregulation; foreign administrations will be invited to extend their operations into the unregulated U.S. market so that they can operate the entire international circuit back to their home countries much like international airlines; and the foreign administrations might face retaliation if they do not grant reciprocity to U.S. international carriers.

Thus, without advance probing by the task force, the bill could cause international discord; and the delicately balanced international telecommunications machine might be threatened with disruption, as it was during the FCC-related incidents mentioned earlier in this testimony.

In our opinion, it would be advisable for Congress to establish the international task force promptly and to direct it, in the words of § 204(a)(3) of S. 2469, to "conduct a comprehensive study of the long range telecommunications and information goals of the United States, the specific telecommunications and information policies necessary to promote those goals and the strategies that will ensure that the United States achieve them." The task force could be constituted in accordance with § 203, guided by the purposes and policies in § 202, and assisted by the private sector advisory committee described in § 207(a). The task force could consult with foreign administrations and explain the goals of Congress. Such consultation might obviate foreign apprehensions and avoid foreign claims that the U.S. in again acting unilaterally.

The task force could also be funded to engage any necessary expert consultants and could be directed to submit regular interim reports to the President and Congress, with a final report to be submitted to these branches of the Government within 18 months. Then, both houses of Congress might be prepared to complete the enactment of comprehensive, international telecommunications legislation in the nature of S. 2469.

This recommended course of action should be attainable during the 97th Congress. The establishment of the task force now may well accelerate the ultimate enactment of comprehensive legislation, which might be difficult to achieve during the remainder of this session.

In the spirit of cooperation, WUI is submitting, as Appendix A to this testimony, our recommended version of the International Telecommunications and Information Coordination Act of 1982, which we have slightly revised to establish the international task force now as the desirable antecedent of comprehensive, international telecommunications legislation.

III. Premature deregulation of the international marketplace would be unwise: Prior to the enactment of the Record Carrier Competition Act of 1981, Senator Goldwater correctly observed that Congress' retention of international regulation, while at the same time relaxing domestic regulation, "is based on our belief that the Commission still has a more significant role to play in the direction of the development of a truly competitive international marketplace." 127 Congressional Record S. 15501 (December 16, 1981).

Likewise, the FCC has deferred consideration of the more complex international sector when it has undertaken domestic deregulatory actions.[1]

Internationally, there are two monopoly-based U.S. carriers, Comsat and AT&T. Comsat has a statutory monopoly over the wholesale provision of Intelsat satellite circuits and over Inmarsat participation. Also, the FCC has accorded Comsat a de facto monopoly over the acquisition of satellite circuits at intelsat prices, thus, forcing the retail carriers to pay a substantial mark-up to Comsat. AT&T has a de facto monopoly over international message telephone service, whose revenues are double those of the combined revenues of all of the other U.S. international retail carriers. According to a recent NTIA/MarTech Report,

"Indeed, the odds are that the . . . industry structure . . . could feasibly become controlled by either a single entity—AT&T, or by a duopoly of AT&T and Comsat."[2]

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[1] Resale and Shared Use of Common Carrier Services, 62 FCC 2d 588, 593, 603 (1977); Second Computer Inquiry, 77 FCC 2d 384, 488–89 (1980); Competitive Carrier Rulemaking, 77 FCC 2d 308, 311 (fn. 6) (1979).

[2] Competition and Deregulation In International Telecommunications, prepared for National Telecommunications and Information Administration by MarTech Strategies, Inc., July 10, 1981, p. 16.

Another unique aspect of international telecommunications is that it falls within the province of a single monopoly entity—usually government—run—in the overwhelming majority of the nations of the world.

Notwithstanding the above factors, S. 2469 sets a fast pace for international deregulation. It might be better to await the report of the task force.

A. Deregulation by default.—The bill (as we understand it) sets a one-year deadline for the FCC to determine which international services should continue to be regulated, § 607A(b). If the FCC misses this deadline, with respect to any or all international services, they will automatically be deregulated, § 607A(c)(1).

Thus, the bill could lead to deregulation by default, a result that probably was not intended.

The FCC was unable to meet its 90-day statutory deadline under the Record Carrier Competition Act of 1981, in which to prescribe a record carrier interconnection agreement. Moreover, the FCC is, today, into its 158th day without prescribing a complete agreement. S.2469 imposes additional time-consuming, complex duties upon the FCC without providing funds for any additional staff. Therefore, it is unlikely that the FCC could reach a reasoned, principled decision with respect to each international service within the short timeframe of one year. Parties aggrieved by any deregulation by default might have dubious appellate rights in light of the finality of § 607A(c)(1).

Aside from the one-year deadline, transitional deregulatory guidelines should be pegged to actual procompetitive changes in the market, itself, rather than to any fixed dates. To the contrary, §§ 604(a)(9) and 604(b) equate "competition" and "deregulation," and appear to decree that they should be attained simultaneously. However, deregulation is likely to retard, rather than promote, competition in the international market. Surely, this will be the case if either AT&T, Comsat, or any of their affiliates, are deregulated before a fully competitive marketplace develops.

The bill does not appear to recognize that a fully competitive marketplace, and not deregulation for its own sake, should be the ultimate goal. In the international arena, it is not at all clear whether market forces or their proxy—government regulation—would be more conducive to an ultimately fully competitive marketplace. We know of no "selective deregulation" which has produced overall consumer benefits in the international sector, as § 604(a)(8) appears to claim.

The foregoing demonstrates the desirability of our proposal for the international task force to fulfill its assignment before, not after, the enactment of substantive legislation. Moreover, it seems costly and duplicative to direct the Secretary of Commerce alone (who would also be a member of the task force), rather than the task force itself, to collect and analyze relevant information, pursuant to §§ 606(f) and 303 of the bill, after (rather than before) its enactment.

Literally, the bill authorizes the FCC to "exempt any person"—presumably, including the monopolists AT&T and Comsat—from regulation, § 609(a)(2). This provision appears to be at odds with §§ 102(c) and 503(a)(1) of the Communications Satellite Act of 1962, as amended, which vest monopoly powers in Comsat with respect to the Intelsat and Inmarsat satellite systems. AT&T's international telephone monopoly is certainly not a likely candidate for deregulation.

Moreover, § 607(c) of S.2469 appears to establish as a criterion for dominant carrier status, dominancy "in the provision of regulated international telecommunications services in a substantial percentage of the total number of markets or submarkets for international telecommunications services." The shortcoming of this provision is that it appears, for example, to equate the expanding one-billion-dollar international message telephone market, as monopolized by AT&T, with the declining international telegram market served competitively by many carriers. Unfortunately, overzealous deregulators could seize upon § 607(c) and argue for AT&T's deregulation, internationally.

Section 609(b) of the bill seems to limit the FCC's powers to those "specifically provided," and to negate the useful, implied-powers clause of § 4(i) of the Communications Act of 1934, as amended. Surely, if the FCC could be trusted with the power to deregulate monopoly carriers, like AT&T and Comsat, it should be trusted to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions," § 4(i) of the Communications Act.

B. Fully separated affiliate of dominant carrier would be ineffectual safeguard against anticompetitive behavior.—The provisions for a "fully separated affiliate" in §§ 620, 621 and 606(d) of S. 2469, will not provide any safeguards against anticompetitive behavior; and even worse, might enable monopolists, such as AT&T and Comsat, to overwhelm the international market through their unregulated alter egos.

The FCC, Department of Justice, and General Accounting Office have all concluded that affiliates within the same corporate structure are bound to work together for the overall corporate profit. It would be unrealistic to believe otherwise.

The FCC has acknowledged that separate affiliates within the Comsat corporate structure will not provide any solution to concerted corporate anticompetitive conduct:

"However, this structural arrangement would not provide a solution to the conflict of interest problems that we have also described in this report, since it would continue common ownership between Comsat's INTELSAT/INMARSAT functions and its other lines of business. From common ownership will flow the incentive for all corporate actions to be coordinated in a manner that will benefit the entire corporation. Thus, Comsat's incentive to weigh the interests in its other lines of business when involved in INTELSAT/INMARSAT matters would continue, notwithstanding the structural separation and controls this arrangement would impose on Comsat. We therefore believe that a nonstructural control in the form of more effective government oversight must be utilized to protect the public from conflicts of interest resulting from Comsat's involvement in non-INTERLSAT/INMARSAT line of business." [3]

When the FCC ordered Comsat to create a separate subsidiary (Comsat General), the FCC expected that the subsidiary would "not be a mere division of Comsat" but rather "a separate corporate entity" and an "arms' length" subsidiary which would make its own day-to-day decisions.[4] However, the FCC found out otherwise: "Comsat's current corporate structure and decision-making process clearly gives the parent corporation a decisive role in major policy and program matters involving Comsat General. . . ."[5] Moreover, the FCC found that Comsat General's officers "coordinate" with their Comsat counterparts to such an extent, that the two entities virtually are integrated, and their separateness merely is cosmetic.

Section 606(d) of S. 2469 virtually ensures that a "fully separated affiliate" will still be integrated with its parent and will continue to follow its directives:

"Nothing in this title is intended to preclude management personnel of a dominant carrier from directing the operations of any dominant carrier, any affiliates, and any fully separated affiliates. . . ."

For this very reason, the FCC has realistically concluded that the separate subsidiary approach is ineffectual:

"A separate subsidiary requirement, from a purely structural perspective, does not guarantee a competitive marketplace because it does not significantly change the incentive of a firm upon which it is imposed. The requirement does not impart an incentives to operate the subsidiary in a manner that would detract from the overall profitability of the parent corporation. Thus, in general, if the parent has an incentive to exercise its market power to the disadvantage of consumers and competitors in the absence of a separate subsidiary, it has the same incentive to do so after one is required.

"Simply relegating certain activities to a separate subsidiary may not, however, prevent abuses of market power and anticompetitive conduct." [6]

The Department of Justice has reached the same conclusion:

"It is clear, however, that the separate subsidiaries concept is likely to have a de minimis impact on removing incentives to the exercise of market power."

Continuing, Justice said:

"Moreover, the principle that 'separate' entities operating under the same corporate umbrella are unlikely to prevent anticompetitive consequences has long been recognized by antitrust courts." [7]

Although S. 2469 requires the separate affiliate to have separate officers, personnel and books of account, § 620(a)(2)(4), it sets no deadline in § 621(b) for the submission of an accounting system to the FCC "which ensures a complete separation between the provision of regulated and unregulated services." By contrast, the FCC is given a short 45-day deadline to establish procedures "for the expeditious consideration" of petitions by dominant carriers to establish separate affiliates, and an unrealistic deadline of 180 days to act upon such petitions, § 620(d).[8]

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[3] Comsat Study, 77 FCC 2d 564, 764–65 (1980). (Emphasis added).

[4] Communications Satellite Corp., 45 FCC 2d 444, 451, (1974).

[5] Implementation of Inmarsat, 74 FCC 2d 59, 106 (1979).

[6] Second Computer Inquiry, 77 FCC 2d 384, 462 (1980).

[7] Reply Comments of DOJ (pp. 16–18) filed with FCC, on July 3, 1980, in Cellular Communications Systems, 78 FCC 2d 984 (1980).

[8] The burdens of these deadlines virtually assure that the FCC will not be able to meet the one-year deadline for determining whether to deregulate services, and that, accordingly, there will be deregulation by default. See p. 10 of this testimony.

Additionally, the entire concept of effective separateness under the same corporate umbrella is flawed:

"In like manner, here, a separate subsidiary with separate officers, personnel and books of account is unlikely to deter anticompetitive potentials. The officer and employees will still be a part of the wireline carrier's corporate umbrella and thus subject to suggestions if not directives. Further, even if legions of accountants were used, it would be extremely difficult to determine whether cross-subsidization between wireline and cellular services was actually occurring.[9]

Finally, the General Accounting Office has recently noted:

"While FCC has required dominant carriers to establish one or more separate subsidiaries to provide unregulated enhanced service and customer premises equipment offerings, such subsidiaries do not represent a self-sufficient solution to the problem of market power and its abuse. Most importantly, a separate subsidiary requirement does not fundamentally alter the incentives of a firm to which it is applied. Thus, if a carrier has the incentive to exercise its market power to the disadvantage of consumers and competitors, it will have essentially the same incentive if it is subject to a separate subsidiary requirement."[10]

Aside from unproven theory, experience has shown the futility of the separate-affiliate concept. It has not worked with Comsat. Nor has it worked with AT&T, who has had about two dozen separate affiliates for generations; and the imminent divestiture thereof is the only acceptable solution to concerted anticompetitive behavior by AT&T corporate affiliates.

The separate-affiliate concept, contained in S. 2469, would most likely be ineffectual and would probably provide a convenient disguise for dominant carriers, like AT&T and Comsat, to wear while they are overwhelming competition unrestrained by any government regulation.

IV. Resale and shared use of international services and facilities, largely unregulated, would be at odds with international comity and detrimental to national interests: Resale and shared use of international leased channel service is contrary to the General Principles of the International Telegraph and Telephone Consultative Committee (CCITT) of the International Telecommunications Union (ITU), now an agency of the United Nations. Therefore, the ITU is the appropriate forum for determination of a policy with such worldwide impact. For more than seventy years the U.S. has steadily supported the ITU. In 1980, the then chairman of this subcommittee, Senator Hollings, wrote to the ITU and congratulated it for its "tireless efforts," without which "the communications industry and the public it serves would face tremendous difficulties." Senator Hollings concluded:

"We in the United States are proud of the contribution which our domestic industries have made, and we look forward to a continuation of the cooperative environment fostered by the ITU, which will permit continued growth and prosperity for us all." Telecommunications Journal, Vol. 47 VI/1980.

Two years ago, the FCC issued a notice of proposed rulemaking calling for the resale and shared use of international circuits on an unregulated basis. The responses from consumers, U.S. carriers and overseas administrations were resounding in their opposition. The overseas response was one of indignation that the U.S. would unilaterally undertake a radically new international policy in direct conflict with CCITT recommendations, in which the U.S. concurred.

Thus, the Director of the CCITT wrote to the State Department:

"What credibility can the United States delegation to future CCITT meetings, and more generally in the ITU, expect to have, if your Administration decides to apply to international private leased circuits provisions conflicting with those which it has approved at the international level within the framework of the CCITT."

Continuing, the Director wrote:

"The CCITT Recommendations, on all of which a consensus is reached within the Study Groups before they are adopted by the Plenary Assembly, represent the very core of international cooperation in common carrier telecommunications, while at the same time laying the foundations for the essential standardization without which no public international telecommunication service can operate." [11]

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[9] Reply Comments of DOJ (p.18) filed with FCC, *supra*.

[10] Report by the U.S. General Accounting Office, Can the Federal Communications Commission Successfully Implement Its Computer II Decision? CED-82-38, January 29, 1982, pp. 3-4.

[11] Letter, dated June 20, 1980, from the Director of the CCITT, to the Director of the Office of International Communications Policy, Department of State, p. 3. The full text of this letter is included within Appendix B of this testimony.

In view of the controversy engendered by the FCC's 1980 proposal, we can assure you, Mr. Chairman, that the § 608 resale provisions will "provoke extensive debate" especially "in the international community," as you predicted when you introduced S. 2469. 128 Congressional Record S 4435.

In 1980, WUI received two dozen strongly-worded messages from our foreign correspondents objecting to the FCC's proposed unilateral action contrary to CCITT policy. Many of these administrations reminded us that the U.S. should submit its proposal for resale and shared use at the next appropriate CCITT meeting. However, the U.S. failed to do so, and the foreign administrations have most likely concluded that the 1980 proposed unilateral action has been abandoned.[12]

Any abrupt turnabout at this jucture would most likely be viewed as a breach of international comity in the international community. Moreover, the applicable CCITT polices (set forth in Appendix B to this testimony) empower the administration to "cancel" international circuits used for resale purposes. Since such cancellations were actually threatened in 1980, U.S. consumers (including the Department of Defense) urged the FCC not to adopt any unilateral policies because this might result in increased international communications costs of several billion dollars, annually.[13]

Another troublesome aspect of § 608 of S. 2469 is the provision empowering the FCC to regulate or restrict resale operations in the U.S. by a foreign entity "to the extent that such resale services offered by United States telecommunications persons are regulated or restricted in the home country of such entity." A short-staffed and deregulatory-minded FCC will not be able to pay as close attention to the resale activities of foreign entities in the U.S., as will the foreign administrations to U.S. resale operations overseas which are likely to be viewed with hostility. As a matter of fact, the FCC now authorizes carriers to provide international services from the U.S. without even requiring advance disclosures of the carriers' owners. On April 22, 1980, when the FCC authorized International Relay, Inc., (IRI) to become a U.S. international carrier, the following informative dialogue occurred during the Commission's "sunshine" meeting:

"Commissioner: Who is IRI? Do you know who they are?

"Staff Members: In all honesty, I don't know who they are, sir, because they don't have to file ownership information with their application under our rules.

"Commissioner: It seems to me we ought to know who people are. Maybe they are on the board of directors of RCA, or maybe one is my cousin and I don't want to vote. . . . I remember one time Howard Hughes wanted to take over ABC. It was a big thing here; and oh, I think he would gave gotten away with it, but he let it be known he would not appear before us and we decided we were not going to give it to a spook. Maybe he's here somewhere.

"Another Commissioner: Maybe he's IRI.

"Another Staff Member: Commissioner, we'll certainly take a look at the rules, and make some sort of report to you [about whether the rules should be revised to require carrier ownership disclosure prior to the grant of licenses].

"Chairman: Yeah, we can grant the application."

The foreign reciprocity required by § 608 might seldom come into play. Most U.S. carriers do not maintain operations in foreign countries, where telecommunications is nationalized, and may not wish to do so even if § 608 becomes law. Therefore, foreign entities might enter the U.S. resale market and receive all of the international traffic from their affiliates in their home countries, to the exclusion of U.S. international carriers. If the FCC stepped in at that point to restrict the U.S. resale operations of those foreign entities, unplesant international incidents might result.

For all of these reasons, we strongly recommend that the international task force, proposed in S. 2469, should be established promptly and directed to explore the issue of resale of international services with the international community *before* Congress enacts any legislation dealing with this controversial issue.

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[12] WUI's Supplemental Comments, filed with the FCC on May 19, 1982, have been included within Appendix B because they explain the problems likely to arise from any new action in the U.S. fostering the resale and shared use of international facility. Also, our Comments document the concerns expressed by the Department of Defense that unilateral U.S. action in this field could cost DOD more than $500 million annually in increased international telecommunications expenses.

[13] We have included within Appendix B to this testimony a message to the FCC, dated May 3, 1976, from a European organization of telecommunictations entities showing that these entities actually embargoed the activation of transatlantic circuits for a peroid of time in 1976 in response to unilateral FCC actions contrary to a prior international agreement relating to a transatlantic submarine cable.

V.—Comsat's proper role is the carriers' carrier, not their competitor: Congress clearly intended Comsat to be the wholesaler of satellite circuits when it established Comsat in 1962:

"The satellite corporation and the carriers will not be competing in the same market." [14]

History has shown the correctness of Congress' judgment, and we respectfully disagree with the amendments to the Communications Satellite Act proposed in §§ 304(j) and 304(k) of S. 2469, which would make Comsat eligible to occupy the dual role of supplier and competitor of the carriers. The FCC adopted Congress' original policy in its Authorized User decision in 1966.[15]

A. *Comsat's role should not be changed.*—Comsat has been ambivalent about its desire, or even ability, to serve the public directly. As recently as February 8, 1982, Comsat reaffirmed that it "has not urged revisions" to the original policy of the FCC during its currently outstanding authorized user revisited proceeding.[16]

In its 1980 Comments in the current FCC proceeding, Comsat declared that "it would be advisable for the Commission to defer efforts to adopt and implement unilaterally the major policy initiatives" designed to thrust Comsat into the retail market.[17] Consistent with WUI's position explained at the outset of this testimony (see pp. 3-5), Comsat told the FCC that the domestic and international telecommunications markets are vastly different, and that accordingly, the FCC should not "unilaterally" take on major policy decisions regarding Comsat's role in the international marketplace.[18] Moreover, Comsat also adverted, in 1980, to the "large capital investments" which it would require to establish an international retail communications network. Subsequently, Comsat has stretched its resources thin by committing or investing hundreds of millions of dollars in Satellite Business Systems, Satellite Television Corporation, and other extracurricular activities.

Therefore, Comsat concluded:

"[W]e believe that Comsat should continue to provide channels of satellite communications much as it does now. That is, Comsat would continue to be primarily a carrier's carrier, providing service at international earth stations in accordance with present earth station ownership policies." Id. at 20.

Even if Comsat wished to enter the international retail market, any such entry would be detrimental because Comsat's dual role, as the exclusive supplier and as a competitor of the international carriers, would be fundamentally inconsistent and, therefore, anticompetitive.

In a current case before the FCC, an Administrative Law Judge found that Comsat quoted a "wholesale" rate to WUI of double the "retail" rate submitted to the end user, the Department of Defense, for whose business both Comsat and WUI were competing. The FCC Judge concluded that "Comsat's behavior was obviously illegal and harmful to WUI.[19] Additionally, the Judge found that Comsat's rate quotation to DOD was unreasonably low; that WUI and Comsat's other carrier-customers would be subsidizing Comsat's unlawful rate to DOD; and that higher, reasonable rates should be prescribed for DOD's service. Understandably, DOD balked at paying rates higher than were quoted by Comsat during the competitive bidding process; the DOD service requirements remain unmet; and Comsat's specially constructed earth stations stand idle.

No one could invent a scenario more convincing than the one described above to demonstrate that Comsat should not be competing with its carrier-customers.

Finally, Comsat has shown a reluctance to compete with AT&T (Comsat's largest customer who provides about 70 percent of Comsat's international revenues) in the international message telephone service.[20] Comsat would like the opportunity, however, of selectively competing with the other U.S. carriers. This corroborates the fears expressed in the recent NTIA/MarTech Report that the international telecommunications industry could become controlled "by a duopoly of AT&T and Comsat." (See p. 9 of this testimony.)

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[14] This often-quoted statement was made by Senator Pastore, the manager of the satellite bill, immediately prior to its enactment. 108 Congressional Record 16920 (1962).

[15] 4 FCC 2d 421 (1966), affirmed upon reconsideration, 6 FCC 2d 593 (1967). In 1980, the FCC decided to revisit its authorized user policy and this proceeding is still outstanding. 77 FCC 2d 535 (1980).

[16] Letter from Lawrence M. DeVore, Vice President and General Counsel to FCC (File I-S-P-7).

[17] Comsat Comments in FCC Docket 80-170, August 12, 1980, pp. 18-19.

[18] "However, in examining the applicability of these [FCC] domestic pro-competitive policies to the international market consideration must be given to the existing structure of that market which has developed over many decades. There exist complex institutional, political, legal, operational and economic interrelationships between and among U.S. international carriers, their customers, foreign telecommunications administrations, and various governments which make the international telecommunications market very different from the domestic market." Id. at 6.

[19] Initial Decision of FCC Administrative Law Judge Edward J. Kuhlmann, Docket Nos. 81-353-356, December 10, 1981, p. 20.

For the foregoing reasons, WUI recommends that S. 2469 should be revised to eliminate the proposed changes in Comsat's market status. At the very least, such a major step should be deferred pending review by the international task force.

B. International carriers should only pay intelsat cost-based rates.—WUI and the other carriers have been compelled to pay excessive charges to Comsat, as their only U.S. source for Intelsat circuits. Until the late 1970s, Comsat's excessive charges remained unchecked. Although the FCC ordered reductions and partial retroactive refunds, it will be difficult for a short-staffed FCC to maintain effective, continuing surveillance over Comsat's rates.

The time is overdue for legislative changes to ensure that the U.S. international carriers can obtain cost-based satellite circuits, and thus avoid Comsat's middleman mark-up prices. WUI is able to obtain cost-based satellite rates overseas, when it connects in tandem, transatlantic cable circuits with satellite circuits in Italy or Spain, for example, for a through route to a country in the Indian Ocean region. Surely the cost of international satellite circuits in the U.S.—a procompetitive society—should be no more than in foreign countries, which have a penchant for telecommunictions monopoly structures.

Therefore, WUI recommends that S. 2469 be amended to expressly provide that the international carriers shall have the option to obtain Intelsat cost-based circuits from Comsat, upon the payment of a reasonable administrative charge only. Such an arrangement could result in lower rates for the consumers. To the extent that the carriers opt to acquire cost-based Intelsat circuits on an investment basis, Comsat would be relieved of its capital burdens to fund the entire U.S. investment in the Intelsat system and, at the same time, free up additional capital for Comsat's heavy commitments in non-Intelsat related activities.

CONCLUSION

We pledge our cooperation to the Subcommittee and its Staff during their deliberations, and their revisions to S. 2469. To that end, we are engaged in a comprehensive section-by-section analysis, which has disclosed what appear to be ambiguities, omissions, and contradictions. Of course, many sections are perfectly crafted, and we need not include them in our analysis. We will make our analysis available to the Staff. Moreover, we stand ready to assist in any possible manner to promote the commendable objectives of the Subcommittee.

In conclusion, we reiterate that the international task force, as wisely contemplated in S. 2469, should be established promptly during this session in order that Congress can have the benefit of its studies and reports for the subsequent formulation and enactment of comprehensive, international telecommunications legislation.

APPENDIX A

RECOMMENDED REVISED VERSION OF INTERNATIONAL TELECOMMUNICATIONS AND INFORMATION ACT OF 1982

As indicated in the foregoing testimony, WUI is submitting a slightly revised version of the International Telecommunications and Information Coordination Act of 1982, which is designed to establish the international task force as the necessary antecedent of any substantive legislation.

The inclusion of the FCC on the task force should not compromise the independent status of the agency since the task force (under WUI's approach) would submit recommendations and advice to the President and Congress. However, if the task force were actually to approve and disapprove policies (under S. 2469's approach), we would be concerned about compromising the independence of the FCC by virtue of its serving on a task force within the executive branch, together with cabinet officials who serve at the pleasure of the President.

Our proposed revision is re-titled as the "International Telecommunications and Infomation Task Force Act of 1982." The pagination follows that of the original bill by commencing on page 51. Textual additions are in italic, and textual deletions are indicated by black brackets around words. When entire sections are deleted, the indicator "omitted" is used.

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[20] See Comsat's aforementioned 1980 Comments to the FCC, pp. 6–8; and Comsat's 1977 testimony before the House Communications Subcommittee, Hearings, Serial No. 95–96, p. 192, March 16, 1977.

TITLE II—INTERNATIONAL TELECOMMUNICATIONS—SHORT TITLE

SEC. 201. This title may be cited as the "International Telecommunications and Information *Task Force* [Coordination] Act of 1982".

FINDINGS AND PURPOSE

SEC. 202. (a) The Congress finds that—

(1) the United States telecommunications and information industries make an important contribution to international commerce and are vital to the economy of the United States;

(2) although many governments of the world have recognized the strategic importance of their telecommunications and information industries and have developed policies to promote those industries, the United States has no coordinated international telecommunications and information policies;

(3) the authority and responsibility to develop such policies is devided among Federal agencies on a conflicting and often confusing basis; and

(4) the United States must have an effective mechanism for the development of telecommunications and information policies. The mechanism must coordinate within the Federal Government and between the Federal Government and private sector.

(b) The Congress declares that it is the policy of the United States—

(1) to maintain and promote a viable, strong, and technologically competitive telecommunications industry;

(2) to encourage and assist the open and fair provision of telecommunications and information goods and services in international commerce;

(3) to ensure the preservation and enhancement of the principles of the free flow of telecommunications services and information throughout the world;

(4) to ensure the equitable treatment of United States and foreign enterprises in all international markets of telecommunications and information goods and services; and

(5) to ensure the effective coordination and representation of United States interests in international forums.

ESTABLISHMENT OF THE TASK FORCE

SEC. 203. (a) There is established in the executive branch an International Telecommunications and Information Task Force (hereinafter in this title referred to as the "Task Force"). The Task Force shall be the [principal] coordinating *and responsible* body for the development, *and recommendation to the President and the Congress,* of United States telecommunications and information policies.

(b) The membership of the Task Force shall consist of—

(1) The Secretary of Commerce, the Secretary of State, the Secretary of Defense, the Attorney General, the United States Trade Representative, the Chairman of the Federal Communications Commission, the Deputy Assistant Secretary of State for Trasnportation and Telecommunications Affairs, and the Director of the International Communications Agency; and

(2) the members of the Task Force designated in paragraph (1) may appoint a representative to serve in their place. The representative shall be an official of a rank no lower than that of Assistant Secretary or its statutory equivalent. In the case of the Federal Communications Commission, the Chairman may designate another Commissioner and the Director of the International Communications Agency may designate the Deputy Director of that agency. In the event that the Secretary of Commerce designates a representative, it shall be the Assistant for Communications and Information.

(c) The Chairman of the Task Force shall be the Secretary of Commerce and the Vice Chairman shall be the Secretary of State.

(d) Whenever the Task Force considers matters that affect the interests of Federal agencies not represented on the Task Force, the Chairman may invite the heads of such agencies to designate representatives to participate in the relevant deliberations of the Task Force.

(e) Members of the Task Force shall serve without additional compensation, but shall be reimbursed for actual and necessary expenses, including travel expenses, incurred by them in carrying out the duties of the Task Force.

(f) Omitted.

POWERS OF THE TASK FORCE

SEC. 204. (a) The Task Force shall develop *and recommend* consistent and comprehensive United States international telecommunications and information policies. [and shall advise the President with respect to those policies.] In order to avoid duplicative and conflicting policies among Federal agencies, and to assure the greatest possible cooperation among such agencies, the Task Force shall—

[(1) coordinate the policies of all Federal agencies involving international telecommunications and information,]

(1) [(2)] review all significant policy determinations of Federal agencies, and all proposed statement of United States policy by such agencies, relating to international telecommunications and information: [and approve, disapprove, or modify any such policy, determination, or proposed statement where necessary;]

(2) [(3)] conduct a comprehensive study of the long range telecommunications and information goals of the United States, the specific telecommunications and information policies necessary to promote those goals and the strategies that will ensure that the United States achieves them; and

(3) [(4)] conduct a review of the structures, procedures, and mechanisms which are utilized by the United States to develop telecommunications and information policy.

The Task Force shall make recommendations *in a final report* to [appropriate Federal agencies in accordance with the findings of this review. Those recommendations shall also] be provided to the President and [the appropriate Committees of] the Congress *within eighteen months following the date of the enactment of this title, whereupon the Task Force shall terminate.*

(b) Omitted.

(b) [(e)] The Task Force shall [make] *also submit interim* recommendations and reports to the President and the Congress [on a regular basis.] *Within six and twelve months, respectively, following the date of the enactment of this title.*

TRANSFER OF FUNCTIONS

SEC. 205. Omitted.

ADMINISTRATIVE POWERS

SEC. 206. (a) For the purpose of carrying out its functions under this act, the Task Force may—

(1) utilize those services, personnel, and facilities of the Department of State, the Department of Commerce, the International Communications Agency, and the United States Trade Representative, that are used for international telecommunications and information activities;

(2) utilize, with their consent, the services, personnel, and facilities of any other Federal agency; and

(3) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679 (b) of the Revised Statutes (31 U.S.C. 665 (b)).

(b) The Secretary of Commerce and the Secretary of State shall designate such employees as are necessary to serve as staff to the Task Force. The Secretary of Commerce shall designate a director for the staff of the Task Force.

(c) The Task Force is authorized to expend such funds as may be necessary to carry out its functions by retaining consultants and experts, provided that such expenditures shall not exceed the sum of two million dollars.

ADVISORY COMMITTEE

SEC. 207. (a) The Task Force shall establish an Advisory Committee on International Telecommunications and Information (hereinafter in this title referred to as the "Committee") to provide overall policy guidance to the Task Force with respect to the functions of the Task Force. The Committee shall be composed of not more than thirty individuals and shall include representatives of labor, manufacturers of telecommunications, information, data processing equipment, other affected manufacturers, providers of telecommunications, information, and data processing services, other affected service industries, financial institutions, journalists, broadcasters, consumer interests, the legal profession, users of telecommunications services and equipment, and small business.

(b) The members of the Committee shall designate a Chairman and a Vice Chairman, who shall preside at meetings in the absence of the Chairman.

(c) The Committee shall meet at the call of the Chairman to provide policy advice, technical advice and information, and advice on other factors relevent to the activities of the Task Force. A meeting of the Committee shall be held at least once each calendar quarter.

(d) The Task Force shall, before approving under this Act any statement of new United States policy relating to international telecommunications and information, consult with the Committee for the purpose of obtaining the views of the Committee on the effect of the proposed submission on the social and economic interests of the United States.

(e) The Task Force shall make available to the Committee such staff, information, personnel, and administrative services and assistance as may reasonably be required to carry out the activities of the Committee.

(f) The Task Force shall adopt procedures for consulting with and obtaining information and advice from the Committee on a continuing and timely basis. Such consultation shall include the provision of information to the Committee as to (1) significant issues and developments, and (2) overall objectives and positions of the the United States with respect to the development of telecommunications and information policies. The Task Force shall not be bound by the advice or recommendations of the Committee but the Task Force shall inform the Committee of failures to accept such advice or recommendations. The Task Force shall submit [an annual] *interim reports* to the appropriate committees of the Congress on consultations with the Committee, issues involved in such consultations, and the reasons for not accepting any advice or recommendations of the Committee.

APPENDIX B

UNION INTERNATIONALE DES TELECOMMUNICATIONS; INTERNATIONAL TELECOMMUNICATION UNION; UNION INTERNACIONAL DE TELECOMUNICACIONES

Geneve, le. 20 June 1980.

Mr. ARTHUR FREEMAN, Director,
Office of International Communications Policy,
Department of State,
Washington, D.C.

DEAR MR. FREEMAN, I have just learnt of Federal Communications Commission's recent decision to intitate a procedure aimed at extending to the international area the possibility, already available domestically in the United States, of resale and shared use of the telecommunication facilities and services currently provided to users by the international record carriers of the United States.

As Director of the International Consultative Telegraph And Telephome Committee (CCITT), which is, as you know, the specialized organ of the ITU responsible for common carrier telecommunications, I feel complelled to point out that the leasing of international telecommunication circuits for private use is already covered internationally by CCITT regulations. Recommendation D.1 "General principles for the lease of international (continental and intercontinental) private leased telecommunication circuits" contains provisions which administrations and recognized private operating agencies are recommended to apply and which users of private leased international circuits are normally required to observe. Without the least reservation having been expressed, all administrations and recognized private operating agencies participating in the activities of the CCITT reached a general consensus on these provisions of Recommendation D.1, framed by Study Group III, and they were unanimously approved by the VIth CCITT Plenary Assembly (September/October 1976).

I am gratified in this connection to refer to the extremely active part played by your country's large delegation in the preparation of Recommundation D.1, a photocopy of which is attached.

A number of the clauses of this Recommendation imposed limits on the use of leased international circuits, as indicated below:

1. General principles.

1.7 With the limits fixed by Administrations in each case, private leased circuits may be used only to exchange communications relating to the business of the customer. When the circuit is used to route communications from (to) one or more users other than the customer, these communications must be concerned exclusively with the activity for which the circuit is leased.

1.8 Within the limits fixed by Administrations, the customer may derive telecommunications channels from a private leased telephone-type circuit. These channels or some of them, may be extended by means of other circuits leased by the same customer. The channels so derived must not be sub-leased. The equipment for such sub-division shall be provided, installed and maintained by or at the expense of the customer.

1.10 Administrations shall refuse to provide an international private leased circuit when the customer's proposed activity would be regarded as an infringement of the functions of an Administration in providing telecommunication services to others.

1.11 Administrations shall be entitled to take all steps, appropriate in the circumstances, to ensure that the provisions governing the lease of international circuits are respected.

1.12 In the event of a violation of these provisions, Administrations reserve the right to cancel the lease of the telecommunication circuit concerned; they must, however, give the customer immediate and adequate notice of their intention to take such action and sufficient opportunity to respond thereto.

6. Use of public networks in conjunction with international private leased circuits

6.1 General principles.

6.1.1 Use of public networks (telex, telephone, data) for transmitting or receiving information from or to international private leased circuits may be authorized subject to the condition that the Administrations concerned shall consult and agree on the extent to which such use may be permitted.

6.1.2 If the national law or established practices of an Administration participating in the establishment of the service do not allow access, the relevant Administrtion has the right to refuse such access on its side.

6.1.3 An international private leased circuit may be allowed access to the public network, provided that:

(b) all information exchanged over a private lead circuit relates solely to the activities for which the circuit has been leased;

(c) such information is exchanged only with public network subscribers nominated by the customer and approved by the Administrations concerned. Upon demand of any individual Administration, a complete list of nominated subscribers will be made available, taking into account national law or established practices including those with respect to right of privacy.

This being so, I scarcely know how to conceal my surprise and my deep disappointment on hearing of the measures recently announced by the FCC. I must say that I am extremely disquieted by the fundamental contradications between the new regulatory measures contemplated in the United States concerning the resale and shared use of leased international private circuits and the above-quoted provisions of Recommendation D.1.

What credibility can the United States delegation to future CCITT meetings, and more generally in the ITU, expect to have, if your Administration decides to apply to international private leased circuits provisions conflicting with those which it has approved at the international level within the framework of the CCITT.

It seems to me an extremely dangerous situation when one country, and what is more, the leading country with regard to the number of subscribers, the extent of its services and its telecommunication technology, can help to undermine the work of the CCITT. The CCITT Recommendations, on all of which a consensus is reached within the Study Groups before they are adopted by the Plenary Assembly, represent the very core of international cooperation in common carrier telecommunications, while at the same time laying the foundations for the essential standardization without which no public international telecommunication service can operate.

To implement at the international level provisions which are at variance with the CCITT Recommendations is tantamount to repudiating their validity and purpoee and at the same time sapping the moral authority of the CCITT.

I cannot believe that this is the intention of the United States of America and I should therefore be very glad if you could bring your influence to bear to ensure that the provisions of CCITT Recommendation D.1 continue to be implemented, as in the past, by all countries.

Yours sincerely,

L. Burtz,
Director of the CCITT.

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, D.C.

CC Docket No. 80-176

In the Matter of: Regulatory Policies Concerning Resale and Shared Use of Common Carrier International Communications Services.

SUPPLEMENTAL COMMENTS OF WESTERN UNION INTERNATIONAL, INC.

Western Union International, Inc. (WUI) hereby submits its Supplemental Comments in the above-captioned proceeding and respectfully requests that they be made a part of the record and considered on the merits for the reasons set forth in WUI's accompanying Motion to Supplement Record.

WUI continues to prefer that this proceeding be terminated with no action taken or, if not, then it should be recast as an inquiry for the purpose of formulating appropriate international resale and shared use recommendations for submission to the International Telephone and Telegraph Consultative Committee (CCITT) of the International Telecommunications Union (ITU). However, since this proceeding has remained open for almost two years since the last round of comments, the public interest requires that the record be updated with the latest available information, particularly with respect to the effect of mandatory resale and shared use of international service on foreign administrations and customers.

The latest CCITT recommendations continue to prohibit resale and shared use of international leased channel service

Since the last round of comments was received by the Commission in this proceeding, the VIIth Plenary Assembly of the CCITT was held in Geneva, Switzerland from November 10 to 21, 1980. The plenary assembly, which is held every three to four years, considers the recommendations of its Study Groups which are active during the years intervening the plenary meetings.

A review of the latest CCITT D.1 series of Recommendations, which was published following the VIIth Plenary Assembly reveals no change in the CCITT's prohibition against resale and shared use. Thus, Recommendation D.1 entitled "General Principles For the Lease of International (Continental and Intercontinental) Private Leased Telecommunications Circuits" appearing in the Yellow Book, Vol. II.1 contains the following provisions which are identical to the ones adopted in the prior plenary:

1.7 With the limits fixed by Administrations in each case, private leased circuits may be used only to exchange communications relating to the business of the customer. When the circuit is used to route communications from (to) one or more users other than the customer, these communications must be concerned exclusively with the activity for which the circuit is leased.

1.10 Administrations shall refuse to provide an international private leased circuit when the customer's proposed activity would be regarded as an infringement of the functions of an Administration in providing telecommunication services to others.

1.11 Administrations shall be entitled to take all steps, appropriate in the circumstances, to ensure that the provisions governing the lease of international circuits are respected.

1.12 In the event of a violation of these provisions, Administrations reserve the right to cancel the lease of the telecommunication circuit concerned; they must, however, give the customer immediate and adequate notice of their intention to take such action and sufficient opportunity to respond thereto.

Accordingly, were the Commission to adopt an order unilaterally mandating international resale and shared use, it would be in direct conflict with the latest international consensus on that topic.

The FCC's failure to raise international shared use and resale in the CCITT will be construed by foreign administrations as an abandonment of the FCC's earlier position

The FCC has had two years to pursue its position on international resale and shared use in the CCITT and its Study Groups for appropriate international consideration. It has not done so in the Study Group meetings either proceeding the last CCITT plenary assembly—with the result that the topic was not raised in the VIIth Plenary—or in those Study Groups held since the last plenary.

For example, a review of the minutes of a U.S. Study Group A meeting, held in October, 1980—just prior to the last plenary—reveals a discussion of whether or not to put forth as U.S. contribution on the topic of international resale and shared use to the plenary. That meeting—which was chaired by an official of the FCC and at which the FCC had more attendees than any other organization—resulted in a contribution which stated in part:

"The FCC recognized in its Notice of Proposed Rulemaking (NPRM) that the realization of public benefits from the extension of resale and shared use to international telecommunications will depend in large part of the response of the foreign carriers and authorities joining in the provision of international service. It must be realized that a NPRM is not a decision—it is a process wherein the FCC sets forth some proposals and requests comments from interested parties so that it has the latest and most comprehensive information available to it. Comments received by the United States delegation will be forwarded to the FCC." [1]

This contribution, however, was intended to be used only as a defensive document, i.e. if the U.S. delegation were called upon to defend the FCC's institution of this proceeding for unilateral policy making. As a result, this issue was not raised at the plenary and was not subjected to appropriate international debate.

Since the last plenary, U.S. Study Group A has met at least five times on CCITT Study Group III matters,[2] and there has been no further discussion of international resale and shared use.

The possible abolition of international leased channel service would have a major impact on costs and security of DoD

Since the last round of pleadings in this proceeding, the Department of Defense—the single largest U.S. user of international private line services—has expressed its concern that mandatory resale and shared use will lead to the elimination of the service with a resulting significant cost impact and adverse impact on U.S. security.

On the cost impact, which it estimated could increase up to 10 fold or $520 million annually, DoD stated:

"Having no assurance whatsoever that corresponding reactions by U.S.I.C.s and/or the foreign PTTs will not result in . . . [an] unwarranted adverse cost impact on the voluminous and vital international telecommunications needs of the DoD, the DoD has no alterantive but to object to the prescription of unlimited resale and sharing for the private line service market." [3]

DoD is also concerned about the possible effect of this proceeding on U.S. security, stating:

"Without prior bilateral international agreements between the entities involved, providing reasonable assurance that prescription of unlimited resale and sharing will not result in the demise of international private line services, the DoD must also object because of the potentially significant adverse operational impact that could occur regarding our ability to provide secure communications for DoD and non-defense users." [4]

CONCLUSION

The actions of: (1) foreign administrations in retaining the CCITT D.1 Recommendations prohibiting international resale and shared use, (2) the largest U.S. leased channel customer in objecting to international resale and ahsred use on the basis of important financial and security interests, and (3) the FCC in failing to raise the issue for debate in the appropriate CCITT forum, overwhelmingly support the conclusion that this docket be terminated without action.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.
BY: KATHRYN E. MCDONNELL,
Attorney.

COPY OF TELEX MESSAGE, DATED MAY 3, 1976, FROM EUROPEAN ORGANIZATION OF TELECOMMUNICATIONS ENTITIES TO FCC

For the attention of Mr. Walter R. Hinchman, Chief, Common Carrier Bureau.

PROVISION OF TRANSATLANTIC CIRCUITS TO USA

1. At the meeting of the consultative working group on 19 March I read out on behalf of the European delegates a statement of our position in the light of the

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[1] Attachment 2, ¶ 5, Minutes of Meeting of October 22, 1980.

[2] Study Group III is the appropriate CCITT Study Group to consider resale and shared use.

[3] Minutes of Meeting of October 22, 1980, U.S. Study Group A, Attachment 1, ¶ 3.

[4] *Id.*

delay in authorising the activation of TAT 6 circuits, namely that we would not "provide any more circuits to the USA whether routed via satellites or cable," until we know that our correspondents have received FCC's authorisation of the activation of circuits in TAT 6, at least for the first 18 months, in accordance with the plans already agreed between us and the carriers, or with FCC alternatives acceptable to us.

2. We took this step after much discussion and with deep regret at being forced to do so as a last resort to demonstrate to FCC that Europe, an equal partner, could not accept further prolonged delay in TAT 6 activation and unilateral restrictions on its use. We fully recognised the FCC's responsibility within the United States for the American half of the operation, but considered that the great efforts already made by the Europeans to explain their views and to seek an accommodation with the FCC had been sufficient to enable FCC to take these views into account either in authorising the TAT 6 activation plan already agreed between the US carriers and their European correspondents or in indicating what changes they would wish us to consider.

3. We are naturally concerned that the service given to customers, which must be our first responsibility, will suffer so long as the present impasse continues. We have also been influenced by a desire to aid the FCC by removing the difficulty of considering authorising TAT 6 activation under duress.

4. We have therefore decided, in the interests of the service and in the hope of continuing the harmonious an amicable relationships which are normal in international communications, to resume normal provision of transatlantic circuits forthwith in the expectation of a satisfacory and timely FCC decision on TAT 6 activation.

5. It is our firm expectation that this demonstration of goodwill and readiness to avoid damaging confrontations will be reciprocated by FCC through the authorisation of TAT 6 activation plans in sufficiently good time for the first circuits to be brought into service at the end of July when the facility will be ready. It should be realised that about two month's work is required after authorisation before circuits can be ready.

6. I am sure I do not need to stress that the European administrations will be deeply disappointed if this gesture is rebuffed. We shall review progress at the STA meeting on 1-4 June but I confidently hope our US correspondents will then have authorisations that will enable us to pass swiftly on to more constructive items on our agenda.

Regards,

A. H. Mowatt,
Chairman.

Mr. Temple. Thank you, Mr. Conn.

Mr. Mathison.

Mr. Mathison. Mr. Temple, members of the subcommittee, I would like to thank you for the opportunity to participate in these hearings. I would also request that my complete statement be included in the record.

Telenet, as you know, operates a nationwide data communications network, pursuant to FCC authorization. Telenet's network is interconnected directly with carriers in Canada and Mexico and is interconnected via the U.S. IRC's with various overseas countries around the world. As you may recall, Telenet testified before the subcommittee regarding S. 271. At that time, we described policy obstacles to Telenet's entry into the international data communications field pursuant to an FCC authorization granted in 1977.

After more than 6 years of effort, Telenet has recently succeeded in negotiating an operating agreement with British Telecommunications in the United Kingdom for the joint provision of a directly interconnected packet switching service between the United Kingdom and Telenet's network in the United States. This is a significant accomplishment, and we hope to negotiate additonal agreements with other countries.

However, the obstacles to such negotiations, which we described last year, remain. For various reasons, the PTT's have been reluctant to deal with more than a limited number of FCC authorized carriers. This reluctance has resulted in substantial frustration and delay of U.S. policy which favors competition in the international market.

I would like to discuss now two aspects of the legislation, first, the regulatory status of international carriers, and then comment on some structural provisions. The legislation exempts—with respect to the regulatory status of international carriers, the legislation exempts the fully separated affiliate of a dominant carrier from the FCC's regulatory authority. It also directs that the FCC not regulate or restrict resale or shared use of any international service. The legislation also eliminates the FCC's current section 214 certification authority, although the FCC may on its own option continue present certification requirements for service offerings of dominant carriers.

However, the overseas PTT's as monopoly carriers in their respective countries and whose concurrence in international service offerings by U.S. entities is essential typically does not offer service in conjunction with noncommon carriers. Thus, a unilateral decision by the Congress to deregulate the sale of international telecommunications would have the practical result of denying status to the reseller in the eyes of the PTT's.

Therefore, Telenet urges that the legislation should maintain the status of resellers as carriers by simply reinstating the FCC's certification authority over such entities and the services they offer. Congress would, in this fashion, alleviate any concerns overseas that the U.S. is attempting to unilaterally change international communications policy.

S. 2469 directs the FCC to classify carriers as dominant in accordance with required standards which we understand would be met by A.T. & T. and Comsat. The legislation also requires a dominant carrier to form a fully separated affiliate to provide international services on a regulated basis. For the reasons described above, we believe S. 2469 should maintain the FCC's current title II authority over all international telecommunications services. However, due to the competitive nature of the enhanced services market and A.T. & T.'s ability to derive anticompetitive advantages through the joint offering of international services and monopoly services, A.T. & T., we believe, should be required to furnish such services only for a fully separated affiliate. Therefore, we believe S. 2469 should be amended to provide that the separated facility which would provide international services pursuant to FCC certification could be the same entity which also furnishes domestic enhanced services on an unregulated basis.

Alternatively, A.T. & T. should be permitted to establish a separate FSA if it so chooses. The intent of the structural separation approach is to replace restraints on the ability of the dominant carrier to act in an anticompetitive manner. However, the conditions of separation do not in fact mandate an arm's length relationship between the dominant carrier and the FSA. In particular, S. 898 bars joint ownership or use of property between an A.T. & T. FSA and its parent domestically, but there is an exemption internationally.

Well, I will cut my remarks here. I appreciate the opportunity to appear before this committee. I will be happy to answer any questions.

Senator **GOLDWATER**. Your remarks will all appear in the record, and your long remarks are the important ones, because those are the ones that our staff reads.

[The statement follows:]

STATEMENT OF STUART L. MATHISON, VICE PRESIDENT, CORPORATE AND BUSINESS PLANNING, GTE TELENET COMMUNICATIONS CORP.

Mr. Chairman and Members of the Subcommittee, I would like to thank you for the opportunity afforded GTE Telenet to participate in these hearings on S. 2469, the International Telecommunications Deregulation Act of 1982.

Telenet operates a nationwide packet-switched data communications network pursuant to a Federal Communications Commission authorization issued in 1974. Telenet's network is interconnected directly with telecommunications carries in Canada and Mexico, and is interconnected via the U.S. international record carriers with overseas countries around the world.

As you may recall, Telenet testified before this Subcommittee in February, 1981 concerning S. 271, your bill amending the Communications Act of 1934 to permit Western Union to enter the international market. At that time, we described policy obstacles to Telenet's entry into the international data communications field pursuant to an authorization granted by the FCC in 1977. After more than six years of effort, Telenet has recently succeeded in negotiating an operating agreement with British Telecommunications, the telecommunications administration in the United Kingdom, for the joint provision of a directly-interconnected international packet switching service between the U.K. and Telenet's public network in the U.S.

This is a significant accomplishment for Telenet, and we hope to negotiate agreements to provide direct service to additional points in Europe and elsewhere throughout the world. However, the obstacles to such negotiations, which we described last year, remain. For various reasons, the overseas telecommunications administrations (PTTs) have historically been reluctant to recognize and deal with more than a limited number of FCC-authorized U.S. carriers, and this reluctance has resulted in substantial frustration and delay of U.S. policy in favor of competition in the international telecommunications marketplace.

Telenet faces a different set of circumstances in the domestic marketplace. AT&T, Telenet's largest potential competitor, is currently in the process of creating a new, unregulated subsidiary to provide enhanced services, in compliance with the FCC's Orders in Computer Inquiry II. AT&T has thus far announced that this new entity will be the provider of Advanced Communications Service (ACS), a new packet-switching service similar in kind to the service provided by GTE Telenet. I will return to this point later in my statement.

The FCC and the courts have formulated a pro-competitive policy toward the domestic telecommunications marketplace, and this policy has been recognized and confirmed by S. 898. The FCC has also been inclined to follow this approach in the international marketplace as well, primarily by certificating new international service providers such as GTE Telenet.

However, neither the FCC nor any other single Federal agency has the full force and authority of the U.S. Government in this area. The overseas PTTs, on the other hand, as a department of their country's government, possess a dual function; they provide telecommunications services, often in combination with postal service, and they formulate national telecommunications policy.

S. 2469 recognizes this, and provides for an Executive Branch task force to focus the U.S. policy-making establishment on the significant trade and foreign relations aspects of international telecommunications and information; and it directs the Secretary of State to insure the effective representation of U.S. policy in conferences involving telecommunications matters.

S. 2469 also recognizes that, in a marketplace characterized by multiple service providers, some entities possess the ability and incentive to act in an anticompetitive manner when they offer services in both regulated and unregulated markets. Thus, the legislation authorizes the FCC to determine which carriers are "dominant" in the market for international telecommunications services; and it permits dominant carriers to offer unregulated services only through a fully-separated affiliate.

Thus, the intent of the sponsors of S. 2469 is to consider U.S. international telecommunications policy in a comprehensive fashion, and on a basis separate from the domestic issues addressed in S. 898, which was approved by the Committee and by the full Senate last year.

Telenet supports and encourages the Committee's focus on these vitally important issues. In some respects, however, the approach of the legislation may not be workable, and may, in fact, result in positive harm to U.S. interests. I would like to describe what Telenet perceives to be the ideal approach toward two major issues which the legislation addresses, the regulatory status of international telecommunications services, and the structural organization of dominant carriers.

1. FCC Regulatory Authority.—S. 2469 confers continuing authority on the FCC over the provision of regulated international telecommunications services, and over any dominant carrier. The legislation exempts a fully-separated affiliate of a dominant carrier from the FCC's regulatory authority; it also directs that the FCC not regulate or restrict the resale or shared use of any international service. S. 2469 does not otherwise define the boundary between regulated and unregulated international services, other than to authorize the FCC to determine which services are to remain regulated, according to certain prescribed standards.

The legislation also eliminates the FCC's current Section 214 certification authority, to permit any U.S. entity to provide an internatioanl service or facility upon notice to the Commission; however, the FCC may, on its own option, continue present certification requirements for service offerings of dominant carriers.

Thus, S. 2469 mirrors the regulatory approach of S. 898 toward domestic telecommunications services. At the same time, S. 2469 recognizes in its statement of policy that the provision of international services and facilities are necessarily joint undertakings between U.S. entities and representatives of overseas sovereign nations; and that the interests of these sovereign nations must be considered in the implementation of U.S. policy. Unfortunately, however, be deregulating the resale function, and by revoking the FCC's certification authority, the legislation does not take account of the significant foreign relations component recognized in its statement of policy. The overseas PTT's, as monopoly carriers in their respective countries, and whose concurrence in new international communications offerings proposed by U.S. entities is esssential, typically do not follow a practice of offering service in conjunction with non-common carriers. Furthermore, current resale and sharing restrictions in the IRC tariffs have been adopted from CCITT Recommendations prohibiting third-party use of private leased circuits by customers. These CCITT prohibitions, however, do not apply to regulated entities.

Thus, a unilateral decision by the Congress to deregulate the resale of international communications would have the practical result of denying correspondent status to the would-be reseller, in the eyes of the PTT's. Additionally, a decision to deregulate international resale services could be interpreted by the foreign administrations as an attempt to abrogate both CCITT policies and provisions of the foreign administrations' tariffs, in violation of principles of international comity. Therefore, Telenet urges that the legislation should maintain the status of resellers as carriers, by simply reinstating the FCC's certification authority over such entities and the services they offer. Congress would, in this fashion, alleviate any concerns overseas that the U.S. is attempting to unilaterally change international telecommunications policy.

We have already referred to the FCC's decisions in Computer Inquiry II, which define the boundary between regulated and unregulated domestic services. The FCC decided in Computer II to maintain continuing regulatory authority over "basic" telecommunications services, defined as a "pipeline" transmission function. The FCC also defined "enhanced" services, which provide features such as protocol conversion and message storage, not found in "basic" services, as unregulated, noncommon carrier undertakings. Telenet's packet-switching service, and A.T. & T.'s forthcoming ACS, are examples of enhanced services. In virtually all foreign countries, by contrast, enhanced as well as basic telecomunications services remain the exclusive province of the PTT.

When provided internationally, enhanced as well as basic telecommunications services should remain subject to FCC certification under Title II of the Communications Act—regardless of whether provided by and underlying carrier or by a resale entity. Otherwise, if international enhanced telecommunications services were deregulated, the U.S. would face the same problems as I have described earlier with respect to basic services. Enhanced service vendors in the U.S., such as Telenet, would be denied correspondent relationships with foreign PTTs for the joint provision of their services to foreign points, and the U.S. government would be looked upon abroad as seeking to unilaterally dictate international communications policy.

Sharing arrangements among communications users, on the other hand, are in a different category than the provision of resale and enhanced services. Because they do not involve the offering of services for profit, sharing arrangements are not inherently a common carrier function, and such arrangements have never been subject to Title II regulation by the FCC. Thus, if the Congress believes that sharing of international services should be permitted, the proper approach may be to authorize the Secretary of State to seek modification of CCITT Recommendations in this respect.

2. Treatment of Dominant Carriers.—S. 2469 directs the FCC to classify carriers as dominant in accordance with prescribed standards, which we understand would be met only by A.T. & T. and COMSAT. The legislation also requires a dominant carrier to form a fully separated affiliate (FSA), to provide international services on an unregulated basis. Thus the legislation adopts, for international services, the premise and approach of both the FCC's Computer Inquiry II decision and S. 898 toward permissive A.T. & T. entry into the domestic market for enhanced telecommunications services.

For the reasons described above, S. 2469 should maintain the FCC's current Title II authority over all international telecommunication services, including enhanced services. However, due to the competitive nature of the enhanced services market and A.T. & T.'s ability to derive anticompetitive advantages through the joint offering of international enhanced services together with its monopoly voice services, A.T. & T. should be required to furnish such international enhanced services only through a fully-separated affiliate. S. 2469 should be amended to provide that this FSA, which would provide international enhanced services pursuant to FCC certification, could be the same entity which also furnishes domestic enhanced services on unregulated services, alternatively, A.T. & T. should be permitted to establish a separate international FSA if it so chooses.

The intent of the structural separation approach, acknowledged in Section 606 of S. 2469, is to place restraints on the incentive and ability of a dominant carrier to act in an anticompetitive manner in the markets for unregulated services, and to protect the users of international services in connection with intracarrier relationships. However, the conditions of separation set forth in S. 2469 do not, in fact, mandate an arms-length relationship between a dominant carrier and any FSA providing international telecommunications services.

In particular, S. 898 bars joint ownership or use of property and joint ventures between an A.T. & T. FSA and its parent or an affiliate; however, it inexplicably exempts international telecommunications and export markets from these conditions. S. 2469 tacitly adopts these exemptions with respect to an A.T. & T. or COMSAT international FSA. S. 2469 also goes further by not requiring a separation of functions in the areas of marketing, sales, installation, production, maintenance, manufacturing, and R&D.

In practice, then, S. 2469 permits a joint undertaking and a sharing of functions between A.T. & T. and its international FSA, and to a joint interest in underseas cable facilities operated by A.T. & T., for the provision of international enhanced services. The bill permits COMSAT to operate in a similar permissive fashion with its FSA. At the same time, S. 898 bars this degree of integration between A.T. & T. and its domestic FSA. There is no rational basis for such different treatment of A.T. & T.'s domestic and international FSA organizations.

Both A.T. & T., with its extensive underseas cable facilities and its control of the U.S. international voice communications market, and COMSAT, as the U.S. designated entity to Intelsat, presently enjoy a substantial degree of market power around the world. As presently written, S. 898 and S. 2469 would add to this leverage by permitting these entities to develop unique, preferential intracorporate relationships which no competitors could hope to match. This does not comport with the legislative intent of the Committee, as it would grant substantial competitive advantages to dominant carriers in their overseas ventures, with no particular benefit to the user of international services. For example, a joint undertaking for the provision of an international version of ACS by A.T. & T. would permit A.T. & T. to use its market dominance to obtain favorable leverage over its competitors with the overseas PTTs.

While we recommend that international telecommunications services to and from the United States remain subject to FCC certification, this would result in a narrowly-prescribed common carrier status. In the case of A.T. & T. and COMSAT, this would not place sufficient restraints on these carriers' ability to use their existing dominance to enter new markets in an anticompetitive manner.

S. 2469 promotes in its statement of purpose a technologically advanced and internationally competitive U.S. international telecommunications industry. If this goal is to be a recognized national policy, S. 2469 should implement this policy by placing all U.S. competitors for overseas markets on a comparable footing.

S. 2469 should proscribe joint ventures and joint ownership or use of property between dominant carriers and an FSA providing international services, and there should be a separation of functions between these entities. For conformity, S. 898 should likewise be amended to delete the exceptions in the A.T. & T. separation conditions set forth in that bill for international telecommunications and export markets. Thus, A.T. & T. would be required to maintain a consistent arms-length relationship with all the services provided by its fully-separated affiliate, both domestic and international.

Mr. Chairman, thank you for the opportunity to present Telenet's views on this important legislation.

Senator **Goldwater**. Thank you, Mr. Mathison.

Mr. Newell.

Mr. **Newell**. Thank you, Senator Goldwater. We appreciate the opportunity to appear before the subcommittee this morning.

I would like to start off by touching briefly on a subject that is very near and dear to our hearts. S. 2469 has various provisions restricting the operation of foreign carriers in the United States for various policy reasons. Unfortunately, the definition of foreign carriers in S. 2469 is so broad that it sweeps up FTC communications, even though we have been a carrier operating in the United States for over 100 years.

We would like to request that this definition be amended to exclude FTC communications in exactly the same manner as was adopted by the Senate last year in connection with S. 898.

Turning now to the bill itself, the broader aspects of this bill, we thoroughly agree with the purpose of the bill as stated to increase competition in the international communications arena. However, we do not believe that this bill will accomplish that result. Rather, it will be counterproductive and reduce competition in the international marketplace, because the bill does not take account of the fact that some competitors are simply more equal than others.

It does not address the largest area of international telecommunications in any realistic manner, that is, the international switched telephone service. That comprises 77 percent of all international telecommunications. There is nothing in the bill which would increase the number of competitors. A.T. & T. is there all alone and ever more will be so, as far as we can see.

The fact that there will be a separate subsidiary for international switched services does not change the fact that there will only be one such subsidiary and no other carrier is likely to provide that service. So that leaves the other 23 percent of the market.

Well, of that 23 percent 16 percent is international Telex. Congress recently addressed that matter in the Record Carrier Competition Act of 1981. Congress enacted a rather sweeping change in the industry. We are now struggling very hard to comply with the provisions of that. We believe we will be successful, that a very much changed industry will emerge from the negotiations and various orders that are being carried on right now.

We believe this activity and this restructuring of the international Telex market should be given a chance to work. So far it has not even been fully implemented yet. It will be within the next 2 or 3 months. We suggest that Congress give this a chance to work for the next year or two, revisit the situation in a couple of years and see what changes have been made and whether any further remedial action is required.

In the meantime, I suggest that you leave well enough alone and continue with the present course the Congress has chosen. We feel that the deregulation of international communications proposed in this bill will not increase the number of competitors—after all, the FCC has granted every applicant for authority for international service all the authority it has ever requested—so simply saying there will be no regulation will not increase the number of competitors.

It may, however, decrease the number of competitors. If we permit carriers with a monopoly base to enter into this market without some monopoly control, the danger is that the monopoly base will extend into the international arena as well as the presently existing monopolies.

Much has been said about the effects of A.T. & T. and Comsat. We endorse the fears expressed by the other carriers concerning the entry of these two very large, very powerful monopoly based carriers.

I would suggest there is another danger. Western Union Telegraph Co. has been permitted to come into the international field, under regulation, however. Whatever tendencies it might have to use its vast control over well over half of the international Telex market to favor its own operations will be subject to the continuing oversight of the FCC. If there are any irregularities, the FCC is there to correct them.

Without FCC control of international Telex, we believe there is considerable danger that there will only be one international Telex carrier and that would be Western Union.

Finally, I would point out that we agree with the points made by the other carriers concerning the entry of Comsat into the retail market. There is a proceeding under way at the Commission to determine just whether and under what circumstances Comsat should be allowed to provide retail communications. We believe the FCC should be permitted to complete that investigation and issue an order based on that investigation.

[The statement follows:]

STATEMENT OF ROGER NEWELL, VICE PRESIDENT AND GENERAL COUNSEL, FTC COMMUNICATIONS, INC.

S. 2469 has a number of provisions sprinkled throughout the text which are designed to implement the purposes of the Bill of "promoting United States interests abroad . . . [and] promoting the technological leadership of United States telecommunications equipment and service suppliers," as indicated in proposed Section 601 of the Communications Act. Inter alia, the Bill provides in Section 624 that the Federal Communications Commission shall have authority to restrict the entry into, or operation within the United States of "foreign carriers" or "foreign persons", based upon the terms and conditions under which United States persons are permitted in the markets of the home country of such foreign carriers or foreign persons.

Additional provisions affecting the operations of "foreign carriers" in the United States are found in proposed Sections 605(a), 606(f), 607(b)(2)(E), 607(c) and 608(a) of the Communications Act, and Section 303 of S. 2469.

Whatever the merits of these provisions as they apply to their presumed targets, telecommunications carriers based in foreign countries, it has an unintended but potentially serious effect upon FTC Communications, Inc. (FTCC), a United States international record carrier providing cablegram, telex and other record communications services between the United States and overseas points, since 1879, under authority of the FCC. The broad definition of "foreign carrier" or "foreign person" contained in Section 603(7) sweeps up FTCC because of its unique history, even though it is an established United States carrier. We believe that the application of the restrictions against foreign carriers to FTCC would be unfair for several reasons.

First, FTCC is protected by a treaty between the U.S. and France, which protects FTCC's rights to conduct operations in the U.S. Secondly, FTCC is in a transitional stage in the process of becoming fully United States-owned, in full accordance with a plan of reorganization approved by the United States Government, through the Federal Communications Commission. This plan, which was entered into as a compromise of litigation, transferred control of FTCC to United States persons, and initiated a process of transfer of ownership of FTCC to United States interests by 1984. Finally, in threatening FTCC's operations in domestic and international markets, the Bill threatens to reduce the competition in those markets, notwithstanding the Bill's objective of promoting active competition in telecommunications.

The Senate has previously considered and accepted FTCC's position. In S. 898, the "Telecommunications Competition and Deregulation Act of 1981," there are a number of provisions designed to promote similar policies. For example, Section 240(a) of S. 898 contains language almost identical to that in Section 624(a) of S. 2469. While S. 898 was being considered, FTCC pointed out the effects on it of these provisions. The Senate adopted an amendment to the definition of "foreign carrier" that in effect exempted FTCC from the operations of these provisions. See Congressional Record, October 7, 1981, pp. S 11200–11201. FTCC requests that Section 603(7) of S. 2469 be amended in a similar fashion, consistent with the position previously adopted by the Senate. For the information of this Subcommittee annexed this statement is the proposed amendment to section 603(7). An explanatory position paper, prepared in connection with S. 898 but equally applicable to S. 2469, providing detailed support for the above statement, will be provided to the Subcommittee's staff.

GENERAL OBSERVATIONS ON S. 2469

One of the purposes of this Bill, as stated in section 601, is to encourage competition in the provision of international telecommunications. The methods proposed in this Bill to further the stated purpose are based on the finding in section 2 of S. 2469 that "competition is a more efficient regulator than Government of the provision of diverse international telecommunications services and, as competition continues to develop, deregulation of international telecommunication carriers and services should occur". What is conspicuously lacking, however, is a reasonable probability that the tools selected will accomplish the aim of increasing rather than decreasing competition. In general, the Bill requires that the FCC should classify all telecommunications services as regulated or unregulated on the basis of certain criteria specified in section 607(b), principally the presence of competition. It is our belief that the withdrawal of regulation of international communications service is more likely to lead to the destruction of competition than to its increase.

The Bill provides that unregulated telecommunication services may be provided by any person at any time, while regulated services are subjected to various requirements (currently applicable to all international communications) such as the requirement to interconnect with other carriers (Section 610), to furnish service to all persons requesting it and to file just, reasonable and nondiscriminatory tariffs (Sections 611–613); to file contracts related to the international telecommunications service and be subject to rate of return regulation by the Commission (Section 614). Additionally, the Bill eliminates the authority of the Commission, contained in section 214 of the Act, to approve or condition the acquisition of new facilities by common carriers, replacing it with a mere notification requirement for nondominant carriers (Section 616).

While these provisions have a theoretical attraction, in the international telecommunications world as it exists today, the net effect will be counterproductive in most instances. The major forms of international telecommunications today are the switched telephone service, which accounts for the vast bulk of all international communications, telex, cablegrams, and leased communications channels. While there are other international communications services such as facsimile, Datel, and packet switching, they do not at present constitute more than an insignificant fraction of total international communications. The relative importance of these international media can be seen from their 1980 revenue (Source: FCC Statistics of Communications Common Carriers, 1980)

Service	Revenue (thousands)	Market share (percent)
Switched telephone	$1,547,371	77.0
Telex	323,278	16.1
Leased channel	99,990	5.0
Cablegrams	37,924	1.9
Total	2,008,563	100

In the international switched message telephone service (IMTS), there is only one United States carrier, the American Telephone and Telegraph Company. Regardless of the presence or absence of regulation, that fact is likely to remain unchanged. As this Subcommittee is well aware, the United States can control only one end of international communications circuits. The other end is controlled by the overseas telecommunications administrations, usually called PTT's, which are normally government monopolies. They are accustomed to dealing with monopolies in other countries, and have shown no inclination to deal with any United States telephone company other than AT&T. Nothing that we can discern is S. 2469 will alter this situation. Thus in 77 percent of the overseas communications market, S. 2469 will not result in any increase in competition whatsoever.

The next largest category of international communications is telex, with $323,000,000 revenue in 1980. This market is already marked by vigorous competition, which has increased in the past few years and may be expected to increase further without action by Congress. There are five international record carriers, of which FTCC is one. These carriers have been providing telex service for many years. There also are a number of newcomers either active or waiting in the wings. The principal addition to the market is The Western Union Telegraph Company, which now has a monopoly control over the domestic telex market, and has been permitted pursuant to the Record Communications Competition Act of 1981 (RCCA) to apply for authority to provide international telex service. Satellite Business Systems has filed an application with the FCC for authority to provide digital communication service between the United States and the United Kingdom, and may be expected to file similar applications for other countries. Graphnet, Inc. is providing telex service between the United States and overseas points, and a number of "refile" carriers are providing telex service, by forwarding messages over the public telephone network for distribution from overseas points. Thus there is already vigorous and increasing competition in the international telex field.

None of the new aspiring international carriers have been thwarted by regulation. In fact the Federal Communications Commission has repeatedly stated its goal to increase the number of international carriers, and has granted virtually all the authority for international record communications that has ever been requested by new carriers.

In enacting the RCAA, Congress mandated all international record carrier to interconnect with any other actual or potential carrier on request, and to supply any carrier providing outbound traffic with a share of the inbound traffic. This requirement is being implemented right now.

Competition in international telex is vigorous and flourishing. It is difficult if not impossible to see how S. 2469 will increase the number of competitors in the international communications field. If there are barriers to competition, they are at the distant end of the line, and not susceptible to unilateral correction by Congress.

There is, however, a great danger that S. 2469 will result in driving out all carriers, such as FTCC, which do not have a monopoly base to support their international telecommunications activities. Thus if S. 2469 is passed, the FCC would be without power to control anti-competitive activities by the large monopoly based carriers which are potential entrants into the international telex market. Only two companies, AT&T and Comsat, own or control virtually all international transmission facilities. AT&T is by far the largest co-owner and controller of the submarine cables between the United States and overseas countrties, and Comsat has sole control over all international satellite communications facilities.

AT&T has pervasive influence over overseas PTT's by reason of its ability to influence the pattern of transit traffic, which provides significant revenue to PTT's. By threatening to shift telephone transit traffic from one transit point to another, AT&T could influence these administrations to shift record traffic to AT&T, if AT&T were permitted to provide international record services. Similarly, Comsat could use its position as the United States representative in the International Satellite Organization to favor its own operations in a competitive market. Western Union would be able to swamp the market by its sheer size. Its revenues in 1981 were $779 million, compared with its largest competitor which had revenues of only $197 million, and it overshadows FTCC which had 1981 revenues of less than $10 million. Western Union could use the revenue generated by its domestic telex and TWX networks, achieved through its monopoly of domestic record communications over 40 years, to subsidize its international telex services so as to drive other international record carriers out of business. It would then be free to raise its prices, presumably to levels above existing prices.

Since there is now effective competition in international telex presumably it would be an unregulated service under the Bill's standards. Consequently, the FCC would be unable to control these predatory practices. For the foregoing reasons, FTCC recommends that Congress retain the power of the FCC to supervise international record communications in order to ensure that all competitors have an equal chance to compete.

COMMENTS ON SPECIFIC PROVISIONS

Section 603(5).—Definition of "dominant carrier"—a telecommunications carrier which is classified as a dominant carrier under the standards of Section 607(c). However, subsection 603(5)(B) appears to state that any carrier is classified as dominant, regardless of size or market share, if it provides international communications. Since this would make Section 607(c) unnecessary, a different result is probably intended, and the subsection should be clarified. However, if mere provision of international service is sufficient, a de minimis rule should be added. It would be absurd for FTCC to be classified as dominant, for example, since it has less that 1 percent of the reord communications traffic, and a much smaller share of the market consisting of all international communications. We suggest that this clause should be amended to exempt all carriers which have less than 5 percent of the international record communications market.

Section 603(7).—The definition of "foreign telecommunications carrier" should be amended as indicated in the first section of this statement.

Section 605(a).—This section states a policy that "marketplace competition will result in technological innovation, operating efficiencies and availability of a wide variety of telecommunications technologies . . .". This appears to be based on the assumption that there is and will always continue to be an idealized form of competition, in which there are a large number of competitors, each equally able to provide service. The true facts are rather different. Some competitors are far more equal than others. They have bottleneck control over necessary facilities, or have large revenue derived from monopolies, or have other advantages. Accordingly, we recommend that this sentence begin "*True* marketplace competition *where all competitors stand on an equal footing* will result in technological innovation . . .". Furthermore, the presumption that "there are no basic technological, operational, or economic factors which would necessarily preclude the provision of any international telecommunications service under contributions of competition" is simply unrealistic, and should be deleted. Certainly it does not apply to switched telephone service.

Section 606(c).—The FCC is granted authority over dominant carriers for the purpose of dealing with anti-competitive practices between such carriers and their fully separated subsidiaries and to protect users of international telecommunications services in this respect. For some reasons, however, the Commission is denied authority over the fully separated affiliate, whether or not such a fully separated affiliate is a dominant carrier in its own right. There is no reason to exclude authority over fully separate affiliates of dominant carriers.

Section 607(a).—This section requires that each international telecommunication service being provided on the date of enactment of this title shall be continued to be provided under tariff on an unbundled basis for a period of not less than one year. This provision is less than clear especially the phrase "on an unbundled basis." There is a conflict here or at least an overlap with the Record Communications Competition Act. This provision should be clarified or deleted. This Section could be interpreted to preclude any limitation or reduction in a service which a carrier finds to be uneconomic. If unlimited competition is to be the order of the day, there should be freedom to withdraw from competition, as well as to enter into competition. Accordingly, we recommend that Section 607A(a) be deleted.

Section 608.—This section prohibits restrictions against resale of any international telecommunications service. The overseas carriers, who have as much at stake as the United States, have strong feelings on the matter of the resale of international services. Currently the Commission is conducting an investigation of this matter, and should be left to reach appropriate conclusions based on the record compiled in that proceeding. If the Commission concludes that prohibition of restrictions on resale of international communications are in the public interest, multilateral negotiations through the agency of the CCITT should be undertaken.

Section 609(b).—The Commission is denied authority to impose any requirements not specifically provided in this title. The problem with this language is that it prevents the Commission from taking action as the situation requires it. While it is impossible to determine in advance every possible situation that may require FCC action, certainly it should not be so restricted. The language of Title II provides a basis for appropriate action where necessary. Accordingly, we recommend deletion of Section 609(b).

Section 610.—Interconnection. This purports to require a carrier providing a regulated service to interconnect with other carriers. If, as we expect, international telex is not to be a regulated service, the implication is that there is no requirement to interconnect international telex with any other service. This would run counter to the express provisions of the RCCA which required such interconnection. On the other hand, if international telex is a regulated service and this section is applicable to it, then the interconnection clauses in section 610 are different from those contained in the RCCA and there would be an unnecessary conflict. We suggest that the Section begin "Except for such classes of communications to which Section 222 of Title 47 applies . . ."

Section 611(b).—Only regulated telecommunications services are required to be "just, reasonable and nondiscriminatory." This would appear to allow a carrier providing a nonregulated service, such as international telex, to provide discriminatory rates, as for example bulk discounts to large customers, and recovering the difference by increasing charges to the smaller users. The Commission should not be stripped of its ability to determine whether or not such practices are justified, and preventing pricing practices which are found not to be in the public interest.

Section 613.—Tariffs. The tariff filing mechanism contained in this section requires the Commission to hold a hearing on a proposed tariff only when the party requesting such a hearing can show "that the tariff constitutes a prima facie violation of the provisions of this title." The normal formulation as contained in established court and Commission precedents is that the Commission may reject a tariff upon a showing that it violates either provisions of law (not limited to the Communications Act) or established Commission precedent or policy. The proposed limitation on the obligation to hold a hearing to prima facie violations of this title constitutes an unwarranted restriction on the Commission's ability to control the tariffs of carriers, and would permit predatory pricing by larger carriers, to the detriment of competition. We believe that the existing provisions of Section 203 and 204 of the Communications Act are adequate and should be maintained without change.

Sections 304(i), (j) and (k).—These provisions amend the Communciations Satellite Act of 1962 to permit Comsat to retail its Satellite services, despite the statutory monopoly granted to it under the Communications Satellite Act. The Commission has been investigating the question of whether Comsat should remain a carrier's carrier, or be allowed to compete against other carriers who lack its advantages of monopoly revenues and facilities. See CC Docket 80–170. An impressive record has been made there that Congress was absolutely right to restrict Comsat to its role as carrier's carrier (except in extraordinary circumstances), in view of its statutory monopoly. The Commission should be permitted to complete its proceeding without interference.

If this Subcommittee should nonetheless decide to adopt these provisions, the public should be safeguarded from anticompetitive conduct related to Comsat's monopoly. At the very least, other carriers should be allowed to have cost-based access to Intelsat earth stations and space segment. Such access could take the form of indefeasible right of user, or of long-term leases at rates which simply flow through the Intelsat space rates or earth station costs.

ANNEX I.—PROPOSED AMENDMENT TO SECTION 603(7) OF S. 2469

"(7) 'foreign telecommunications carrier', 'foreign information supplier', 'enterprise', 'entity', or 'foreign person' means any telecommunications carrier or enterprise or information supplier or entity of which at least 20 per centum of the capital stock or equivalent ownership is owned or controlled by a foreign person or a domestic person acting in behalf of a foreign person, *but shall not be deemed to include a carrier—*

"(1) which is a corporation organized under the laws of the United States or any state thereof;

"(2) at least 75 percent of whose capital stock is owned by United States citizens, and

"(3) which is providing telecommunications services pursuant to a certificate of public convenience and necessity issued by the commission prior to July 16, 1981.

Senator **Goldwater**. Thank you, Mr. Newell.

I may say, the seeming exclusion of FTC communications was an oversight on the part of the writers of the bill and that has already been taken care of.

Mr. **Newell**. Thank you very much, Senator.

Senator **Goldwater**. Now, as to the rest of your complaints, we will work right along with you.

Mr. Stowe?

Mr. **Stowe**. Thank you, Mr. Chairman. I would also appreciate the inclusion of my written submission into the record.

SBS is now providing, through a combination of satellite and terrestrial facilities, a wide range of telecommunications services including high-speed data and document distribution, video conferencing, and voice services. SBS initially planned and sought FCC authorization to provide only domestic services. However, as our system, with its important broadband innovations, has been implemented, a substantial number of our customers have requested the interconnection of their overseas business operations with their domestic SBS networks. In order to accommodate those customer requirements and to maintain a sound competitive position in the U.S. marketplace, SBS began last year to explore the possibility of becoming an international carrier as well.

In January of this year we requested the FCC to authorize SBS to offer services between the United States and the United Kingdom and points beyond. Such services would be offered through use of facilities owned or arranged for by SBS in the United States, through use of Intelsat facilities for the transatlantic hop, and through use of British Telecom and British Telecom International facilities in the United Kingdom.

We were quite pleased to announce also in January the conclusion of an operating agreement with British Telecom International, which will take effect when we receive the requested authorization from the FCC.

During the last several years, SBS has also been deeply involved in U.S. preparations for a number of conferences called by the International Telecommunication Union concerning frequency allocations and use of the geostationary orbit. Adequate availability of those resources and reasonable terms and conditions for their use are absolutely vital to the continued development of innovative and efficient satellite telecommunications services.

Our recent experience in those two areas leads us to four general observations about S. 2469:

First of all, we believe that U.S. policy needs to have the potential for considerable flexibility, because we are dealing with a very large number of disparate partners on the other side of the table and, like it or not, we nearly always have to have their consent and cooperation to get anything done in this field.

Second, in order to be pragmatic, we believe that any legislation should focus primarily on activities which are subject to control by U.S. laws and regulations. You have heard from a number of other speakers this morning a concern that attempts to coerce other countries to adopt our domestic approach are likely not to be fruitful, and we share that concern in this context. We believe that sectoral reciprocity arrangements are more likely to be counterproductive than they are to be helpful.

That is not to say by any means that the U.S. Government, that the executive branch, the Congress or both, should not go on record as favoring competition and enhanced service offerings.

Third, notwithstanding the domestic appeal of deregulation, care must be taken in the international arena to insure that U.S. national interests are adequately protected from others who play by different rules. For example, the elimination of any qualification or Government certification requirement before an organization could offer international services would, we believe, play squarely into the hands of those administrations who do not wish to recognize additional American carriers. Such administrations could simply declare that they will deal only with carriers endorsed by the Government, of which, in their view, there are already more than enough. In addition, they could argue that they have no intention or capability to sort out the capable from the incapable among potentially hundreds of U.S. entrepreneurs.

Furthermore, total deregulation on this side would, as a practical matter, cede a form of regulatory authority over American carriers to the foreign administrations. Those administrations could play off American carriers against each other and would unquestionably exercise their resulting leverage over those carriers for their own benefit and not for the benefit of American users.

We believe there must be some residual, perhaps minimal but nevertheless effective, oversight and power by the Commission in this area. Do we really wish to have other countries exercise that kind of power over American carriers? And if they did, would we not end up with less rather than more competition than we have now?

Finally, we believe that the Congress can help protect a very wide range of important national interests by continuing to focus both attention and essential resources on the preparation and representation of U.S. interests in the critical negotiations in organizations such as the ITU, the Unispace 82 Conference and others. Decisions made there, particularly in the ITU, can have profound implications for the efficiency and economy of communications within this country and between here and abroad.

The task force could conceivably be of considerable assistance if carefully implemented, but we believe that more important than simply adding yet another layer of senior policy review would be creation by the Congress and the executive branch of an institutional environment that would attract and retain highly experienced and competent personnel as permanent staff in this area.

To do so requires not only sufficient funds to do the job right, which do not appear to be available at this time, but also demands that international telecommunications policy is understood to be a matter of vital national interest and there is clear potential for professional reward and advancement in return for excelling in this field.

If these hearings and your legislative actions can create such an environment, Mr. Chairman, we think you will have performed an outstanding public service.

[The statement follows:]

STATEMENT OF RONALD F. STOWE, DIRECTOR OF GOVERNMENT AND INTERNATIONAL AFFAIRS, SATELLITE BUSINESS SYSTEMS

International telecommunications services constitute a major part of the United States telecommunications industry, and provide vital support for the operation of a broad range of extremely important commercial and governmental activities. The nature of government policies toward such services is therefore of critical significance not only to a broad range of service providers but also to a broad spectrum of users representing key national interests. Legislative, Executive Branch and regulatory agency actions, or lack of action, in this area can have a major effect on factors such as the balance of trade, industrial productivity, national security, and the efficiency and economy of many domestic as well as international services, as well as others.

We consider the Subcommittee's initiative in developing S. 2469 and in convening these hearings to be extremely important for a variety of reasons. S. 2469 will hopefully compel relevant officials in both industry and Government to focus more specifically on the important opportunities and obstacles facing the U.S. international telecommunications industry today. It will hopefully lead to greater recognition of the critical role which international telecommunications plays in this country, and of the necessity to have government policies which are strongly and realistically supportive of a vigorous U.S. industry, not only for the sake of the service providers but equally for the sake of the users as well.

SBS brings what is perhaps a unique prespective to these deliberations. On one hand, we are not an established international carrier with years of particular experience and developed interests in this area. On the other hand, we have both substantial customer demand for international extension of our services, an Application for authority to do so pending before the FCC, and an Operating Agreement concluded with a major European Administration. We believe it is an extremely important business for us to participate in, for both competitive and entrepreneurial reasons, and we are hopeful that our Application will be granted.

The provision of such service obviously requires not only the consent of the FCC but the agreement of one or more foreign Administrations which will be responsible for handling and delivering the telecommunications traffic overseas. We are fortunate to have concluded one such agreement already, namely with British Telecom International, which we believe holds exciting promise for the development of new services not now readily available between the United States and Britain. Development as a viable international carrier, however, requires the ability to interconnect with a large number of Administrations around the world, and in this respect we continue to face the same obstacles which have confronted other U.S. domestic carriers which have attempted to expand abroad in the past. It is our desire, once authorized, to be able to expand our range of operating agreements in accordance with the requirements of the marketplace we are serving.

From this perspective, SBS strongly agrees with the findings and purposes set out in S. 2469 in both Title I and Title II. We believe that the Government should establish a legislative and regulatory environment which is supportive of the goals of developing and ensuring broad availability of innovative and economical international telecommunications services and of promoting the continued development of a strong United States telecommunications industry. We believe that competition among providers of international telecommunications services in this country is the essential foundation for accomplishing those goals. As implicitly recognized in this Bill, however, implementation of such policies is not an easy feat.

We believe that U.S. policy must be divided into two subcategories: first, what do we wish to encourage or require domestically, within our legal jurisdiction, and second, what do we wish to advocate and work for internationally, where the cooperation of other Administrations is required.

For example, it should be relatively easy for qualified parties to get domestic authorization to provide international services. Although we agree with the basic intention of S. 2469 to facilitate authorization of international carriers and services, we believe that it probably goes too far by virtually eliminating any qualification requirements at all. In doing so, it may in fact be self-defeating. Recognizing that the basic inclination of most foreign Administrations is to minimize the number of U.S. carriers with which they correspond, the elimination of any U.S. Government certification process would appear to create an easy opportunity for such Administrations simply to refuse to deal with any new U.S. carriers on grounds that they are not capable of screening through scores of potential applicants and, in any case, the U.S. Government should bear the responsibility for screening American entities. The elimination of all certification requirements would also appear to be inconsistent with certain provisions of the ITU Convention and CCITT recommendations.

We believe that this problem could be resolved in an acceptable manner by combining a legislative policy directive that authorization of qualified applicants is to be facilitated, with a requirement that the Commission certify, for example, whether an applicant appears to have sufficient technical, financial and legal qualifications to justify a reasonable expectation that it would in fact provide the proposed service. While such minimal "certification" would provide useful positive and affirmative support for obtaining new international operating agreements, it is even more important that U.S. policy does not reduce the likelihood that a new U.S. carrier can obtain an agreement. In this regard, we believe that S. 2469 contains some provisions which, inadvertently, might have this effect. For example, Sec. 614(c) proposes to give the FCC the authority to vacate or modify agreements and contracts, including the crucial operating agreements. If the FCC changed an operating agreement which had been negotiated between the PTT and an American carrier, we believe that a PTT would consider the agreement totally void under general principles of contract law. More importantly, we think that PTTs would be reluctant to sign any operating agreement in the first place if the FCC could embarrass the PTT and place it in an uncomfortable political position by virtue of the powers proposed in Sec. 614(c).

We also believe that the provisions of Sec. 608, which mandate resale and shared use of U.S. international services are unnecessary and may adversely affect the availability of operating agreements. SBS certainly does not oppose shared use and resale. In our Application to serve the U.K. we noted that SBS's international services tariff would not prohibit resale or shared use. We recognized, however, that the practical ability of a customer to resell or share international service would depend on whether the PTT providing the foreign portion of the international service permits resale or shared use. Sec. 608 will not change this reality. As you probably know, many foreign PTTs are unalterably opposed to resale of telecommunications services. We think that by mandating resale on the U.S. side, Sec. 608 will provide conservative and reluctant PTTs with yet another reason to be wary of agreeing to work with new U.S. carriers, such as SBS, which might be more willing than the established U.S. international carriers to permit resale. If, on the other hand, a PTT permits resale or shared use, Sec. 608 would be unnecessary; the U.S. marketplace will force U.S. international carriers to permit resale and shared use.

SBS is also concerned that some PTTs might react to enactment of Sec. 608 by simply eliminating the leased services that could be resold or shared. Our concern is based on the fact that many PTTs threatened to eliminate leases when the FCC proposed a rule prohibiting U.S. carriers' tariffs from barring resale or shared use. Since SBS has proposed to introduce advanced leased services, elimination of leased services would foreclose much of SBS's ability to enter the international market. Moreover, Sec. 608 would clearly not benefit users if it resulted in the demise of leased services.

SBS has at this point negotiated one Operating Agreement to provide advanced international services. We are negotiating additional operating agreements and, to date, we are encouraged by the course of these negotiations. All the PTTs with whom we have held serious negotiations have articulated a similar rationale for their apparent willingness to introduce international services for which there is no existing equivalent, while many other U.S. carriers are merely seeking to duplicate services which existing U.S. carriers are already offering or could easily offer. There is a strong aversion to further subdividing an existing market among additional U.S. carriers unless it is clear that the additional carriers would bring considerable additional traffic to the table.

Although we have not yet experienced any significant "foreign barrier" problem when it comes to the introduction of entirely new services in the international market, the more serious issue—and one which affects SBS as much as any U.S. carrier seeking to enter the international market—is how to increase competition in the more traditional and state-of-the-art services for which it is impossibe to obtain new operating agreements. For example, how could SBS and other carriers competing with AT&T in the domestic inter-city telephone market have a reasonable chance of offering international telephone service in competition with AT&T? International telephone service is by far the largest segment of the international market and the only international service characterized at the U.S. end by an absolute monoploy. As a result, it is essential that the pro-competitive purpose of S. 2469 be particularly effective with respect to the international telephone service.

As noted above, international carriers must be able to offer service to most major foreign countries, if not to every country in the world, if they are to be effective competitors. If SBS could only serve one or two or even three countries, it would be extremely difficult to compete with AT&T's international telephone service because we would not meet customers' requirements for world-wide service.

While recognizing that it may be impossible for a large number of new U.S. carriers to secure operating agreements with most countries for any particular service, SBS nevertheless believes that U.S. law can still foster vigorous competition among established and new U.S. carriers. We believe that if foreign PTTs are unwilling to enter into new operating agreements, then U.S law should provide a mechanism whereby U.S. carriers which hold operating agreements for regulated international services would be required to make the regulated services available to other U.S. carriers through equitable interconnection provisions. This would have the practical effect of making the benefits of an operating agreement available to more U.S. carriers. At the same time, the terms and condition of the interconnection arrangements should in no way minimize the incentive of U.S. carriers to seek their own direct operating relationships.

This "interconnection" through another U.S. carrier's operating agreement should be perfectly acceptable to the foreign administrations. As far as they are concerned, their U.S. correspondent carrier and their relationship with that carrier would be unchanged. More importantly, such an arrangement would occur entirely within the jurisdiction of the United States and would not intrude on the sovereign powers of any other country.

Sections 610 and 611 of S. 2469 contain provisions which appear to be designed to provide for this sort of interconnection arrangement. We believe that some clarifying amendments would be helpful, however. First, the interconnection provisions should make it quite clear that carriers can be required to interconnect regulated international services, on reasonable request, with any regulated or unregulated domestic or international service. (The current language could be interpreted as only requiring interconnection between regulated international services.) The through-route and interconnection provisions should also be amended to make it clear that interconnection, through-route and division of revenues requirements should be applied, where warranted, to inbound traffic as well as outbound.

SBS has substantial concerns about the reciprocity provisions included in S. 2469. It is our hope that the "equitable market access" provisions of Sec. 624 would not affect the issue of PTTs' willingness or unwillingness to interconnect with U.S carriers for services between the United States and foreign countries. Section 624 states that reciprocity sanctions would be applied, if at all, to foreign entities supplying services or facilities "into domestic United States telecommunications markets." We interpret this as meaning that "reciprocity" would not apply to telecommunications services between the United States and foreign countries. However, we believe that Sec. 624 should be amended to make it quite clear that it does not.

We have a number of reasons for concern about the potential application of "reciprocity" to international services. First, the coercion inherent in reciprocity is totally inconsistent with the spirit of comity and cooperation which is at the foundation of the international services business. Second, at a more parctical level, reciprocity would be effective, if at all, only on a route-by-route, country-by-country basis. At best only a very few countries would respond to reciprocity in its first years of operation and new carriers would therefore be unable to achieve the "critical mass" of countries being served required to sustain an economically viable service. SBS would also be quite concerned about the enthusiasm with which a PTT would implement a coerced operating agreement. There are countless subtle and superficially reasonable actions that a PTT could take which would completely frustrate an operating agreement, to the long term detriment of the U.S. carrier's relation with its U.S. customers.

SBS is also concerned about the reciprocity provisions of Sec. 624 because they could be applied in such a manner as to impair the ability of U.S. international and domestic carriers to obtain transmission equipment at the lowest cost available on the world market. This would occur if the FCC barred certain foreign entities from supplying SBS and other U.S. carriers with "telecommunications facilities," which are defined as "equipment (including wire, cable, microwave, satellite and fiber optic) which transmit information."

We fully sympathize with S. 2469's objective of fostering export markets for U.S. equipment manufacturers. However, we do not think the sectoral reciprocity provisions of Sec. 623(b)(4) and Sec. 624 will achieve the desired results. We are concerned that such "bilateral" and "sectoral" reciprocity provisions may be counterproductive in making available innovative and low cost goods and services to the American public. We do fully support the "global" reciprocity principles embodied in GATT and other U.S. international obligations.

S. 2469 also contains important proposals relating to the institutional arrangements within the Government for coordinating international telecommunications policy. SBS fully supports the Bill's assumption that more effective senior-level attention and coordination of international telecommunications policy are called for. The economic and operational importance of international telecommunications are growing rapidly, as are the variety of international and domestic forums in which these issues arise. We believe that protection of U.S. national interests could be much enhanced by recognition of the growing importance of developments in this area.

Whether the proposed Task Force is the best way to improve international policy coordination, will depend to a great extent on the seriousness and efficiency of the effort. If, for example, the Task Force staff has a permanent status, rather than simply devoting occasional spare moments to these issues, and if Task Force is established in a manner which connotes a positive professional career step for the staff participants, it may well be feasible for the Task Force to provide an essential coordinating and policy guidance function within the Executive Branch. In any event, as a practical matter, establishment of an institution such as the Task Force will be effective only if it is accompanied by sufficient funding to support its responsibilities. Without properly motivated staff and adequate funding, the Task Force will be counter-productive since it would further paralyze effective action.

Finally, we strongly support the Bill's determination that, where appropriate, representatives from the private sector should be included in U.S. delegations to intergovernmental telecommunications conferences. The U.S. private sector is relied upon to provide the vast majority of telecommunications services in this country, and hence its participation is doubly significant. First, private sector representatives can supply essential expertise and support in such deliberations, and second, as the group most directly affected by the decisions of such conferences, it is important for the private sector to participate in the process itself.

Mr. Chairman, SBS believes that international telecommunications services are a vitally important part of the overall U.S. telecommunications industry. We believe that the Congress should examine the laws and policies which govern international services. We commend you and this Subcommittee for taking the initiative in this matter. We hope that our views have been helpful in examining these important issues.

Senator GOLDWATER. I have a couple of questions. The first one is for Mr. Mathison. SBS is obviously encouraged, and, frankly, so are we, by the reception it receives abroad. What has been the nature of your experience, and have the foreign correspondents been as cooperative with you?

Mr. MATHISON. Well, Mr. Chairman, as I indicated, it has taken Telenet 6 years to finally negotiate a direct interconnection operating agreement with Telecom. During that time we were twice approved by the FCC. The first approval of Telenet as an international carrier expired after 3 years and we had to go back and reapply again. During that period of time we were attempting to conclude the operating agreement with BTI.

I think BTI and other PTT's would be substantially more reluctant to deal with Telenet and other like organizations were they not FCC-approved carriers.

Senator GOLDWATER. Thank you.

With respect to reciprocity it is alleged that there are subtle actions that PTT's could take to frustrate an operating agreement in retaliation for the U. S. policies. Could you give us an example, any one of you? Yes, Mr. Conn?

Mr. CONN. Mr. Chairman, we had attached as appendix B to our testimony two such examples.

Again, I want to stress the harmony overseas, not the discord. I am afraid sometimes the headlines play upon the violence and the discord, and not the marital harmony and the good things of life. The overseas administrations we find are very cooperative.

However, in 1976, a situation I do not think will ever be repeated, the FCC instituted a unilateral embargo on the TAT 6 cable that jointly had been funded by European administrations and U.S. carriers. Europe acted predictably. They said, we will not open any more circuits to the United States, by cable, or satellite, unless you, the FCC, lift the embargo on TAT 6.

That embargo lasted for 3 months. It was finally solved. That is one example.

A second example was cited by the State Department yesterday, having to do with the international resale and shared use proceeding of the FCC. Italy, as you know, is a very good friend of the United States, and ITALCABLE is a friend of all the carriers—nevertheless, the Italian administration said, if the United States does not abide by the CCITT recommendations, Italy will be forced to terminate all leased channels and that will cause DOD and all consumers a lot of concern. So, there are two examples.

Mr. Chairman, if I may impose, I cut my opening remarks short because I wanted the opportunity to address the general question you raised with the last panel.

I was somewhat saddened by the uncharacteristically strong language of the FCC last Friday talking about noncompliance by the carriers with your bill S. 271. Again, I will stress that sometimes our fine journalists at the press table tend to headline the discord, not the good things in life. We proposed—and unfortunately the FCC never considered it—submitting early informational tariffs so that we could see if we did indeed comply with the FCC's understanding of your bill.

Our proposal never received the FCC's attention, and they told us we must file officially. Then they were compelled to officially reject, and they used some harsh language. Unfortunately—and I want to link this to your bill, sir—the FCC did not meet its 90-day deadline under S. 271 for a prescribed interconnection agreement. That deadline was April 8. The FCC fell far short, although its very diligent staff worked hard and worked weekends. So, I can understand the frustration of the FCC Commissioners when they failed to meet their own deadline.

I would urge in your bill that you review the deadlines you have imposed on the FCC, because I think they may be unrealistic with the short staff at the FCC. For example, you have a 1-year deadline for ruling on whether services and carriers should be deregulated. If the FCC misses that deadline deregulation by default might occur.

Although the FCC did not comment yesterday, I think that deadline and the deadline to prescribe the code of accounts within 12 months are deadlines that I do not understand how the FCC could meet, realistically.

Thank you for your tolerance of an extended answer.

Senator GOLDWATER. That is a very good comment. It is one that the staff and I have talked about. It is not an easy question to find an answer for, other than answers that have not worked. We want to try and find one that will work.

The deadline business is a very important one. It would be great if we did not have to remind our agencies they have a job to do and to get it done, but we do.

Do you gentlemen have any other comments on this question?

Mr. NEWELL. Senator, I would just like to comment very briefly on the remarks of the Chairman of the FCC on Friday which were mentioned here. The fact of the matter is that the order which the IRC's were trying to comply with was itself not the model of clarity that it could have been or that we might have wished for.

I think the IRC's, including the FCC Communications, did the best they could to accommodate the realities of the situation with what the FCC required of them. I think the Chairman was being unnecessarily harsh in his comments on the IRC's.

Senator GOLDWATER. Thank you very much.

What means, other than reciprocity, do we have legislatively to promote our procompetitive policies abroad? How do we increase competition in traditional services? Do you have any ideas, Mr. Conn?

Mr. CONN. Mr. Chairman, in that regard I would like to reiterate my support for your idea of a task force. Again, I was disappointed with the Government witnesses yesterday. They did not give any ringing endorsement for that task force. I think we need all the expertise in this country that we can bring to bear on these complex international issues.

The Departments in the executive branch that you have designated to be members of the task force should heed your call, should welcome that task force idea, and should move forward to formulate every idea they can to promote international competition. We do not know all the answers. We think, frankly, there is substantial competition in the international record field. We have 12 authorized carriers to provide record and data services, and about six others waiting in the wings for their applications to be granted.

On the other hand, we only have one telephone company providing a service that dwarfs all the record service carriers. We need a way to promote competition in the international telephone service.

But in sum, I would urge that the executive branch heed your call and that you proceed with your legislation to formulate this task force. I think it is a fine idea.

I remember back in the midsixties when your predecessor, Senator Goldwater, would sit in your chair and ask the predecessors of the present Government officials, the OTP director, for example, what is our Government's international telecommunications policy. Every year the answer was, well, we will produce a policy next year. None was ever produced.

So, again, I applaud your idea of a task force and I urge that perhaps you spin out title II of your bill, have it passed promptly this session, and then we can get the show on the road in the executive branch.

Senator GOLDWATER. You just mentioned the worst habit of a democracy: Nothing gets done.

Well, gentlemen, I want to thank you for coming before us today. You have all given very fine testimony, testimony that will help us in our further drafting of this bill.

Our next hearing will be Thursday morning at 10 o'clock. So, with that, the meeting will stand adjourned.

[Whereupon, at 10:55 a.m., the subcommittee was adjourned.]

INTERNATIONAL TELECOMMUNICATIONS DEREGULATION ACT OF 1982

THURSDAY, JUNE 17, 1982

U.S. Senate,
Committee on Commerce, Science, and Transportation,
Subcommittee on Communications,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 235, Russell Senate Office Building, Hon. Harrison Schmitt presiding.

OPENING STATEMENT BY SENATOR SCHMITT

Senator Schmitt. The hearing will come to order.

Today we are happy to welcome Michael Gardner, who is now designated chairman of our delegation to the ITU Nairobi Conference.

Today the subcommittee will hear witnesses on several particularly important issues relative to international telecommunications, first of all, what the United States is doing to prepare for the Plenipotentiary Conference of the International Telecommunications Union in Nairobi, and what action is necessary to insure that the United States is prepared to protect and promote U.S. interests at future conferences.

I regret that my schedule did not permit me to attend hearings earlier this week. In reviewing the transcripts of those hearings, I was interested to learn that the same technological forces that are challenging us to develop new domestic telecommunications policies are beginning to affect the policies and attitudes of other nations. While discussions of the appropriate role of competition are in their very early stages, this is a good sign. Hopefully, these hearings will contribute to those discussions and assist other nations as well as our own in developing appropriate responses to the challenge of new technologies and the continuing challenge of maintaining a free flow of information across national borders.

I was also encouraged by the broad support for improvements in the coordination of U.S. telecommunications policy by the U.S. Government, at least on the surface. As many in the audience are aware, I have repeatedly urged the executive branch, particularly the State Department, to develop a more effective mechanism that will insure the development of long-range strategy and the effective presentation of U.S. positions, both technical and political, at international telecommunications conferences.

Unfortunately, I found the State Department's testimony contributed very little to this dialog, but that is not unusual. In fact, I am concerned that their statement misrepresented our purpose in drafting the provision exempting private sector representatives from certain requirements of existing law. Dating back to the original exemption that applied to the WARC delegation, that is, the World Administrative Radio Conference delegation, we never intended to allow private sector representatives to speak only on technical questions. There would be very little accomplished by placing such a limitation on private sector delegates, who often have a far greater knowledge of telecommunications matters, both policy and technical, than Government delegates.

The subcommittee will ask for a clarification of the Department's position, as the same provision is contained in S. 2181, the NTIA authorization bill, which passed the Senate on June 9.

Again, I want to welcome Michael Gardner. Mr. Gardner, if you have a prepared statement, would you please proceed?

STATEMENT OF MICHAEL R. GARDNER, CHAIRMAN, U.S. DELEGATION TO THE PLENIPOTENTIARY CONFERENCE, INTERNATIONAL TELECOMMUNICATIONS UNION

Mr. **Gardner**. Senator if you would bear with me, it should take about a minute.

On April 28, the State Department announced that I would be the chairman of the U.S. delegation to the Plenipotentiary Conference of the International Telecommunications Union, commonly known as the ITU. This conference is scheduled to take place in Nairobi, Kenya, from September 27 through November 5, 1982.

Since being named chairman, I have been working with leaders of the private sector as well as Government officials in an effort to do three things, primarily: To insure that adequate and creative substantive planning takes place in advance of our arrival in Nairobi just over 3 months from now; second, to assemble a balanced, competent, and highly respected U.S. delegation that will not only insure that the U.S. interests are advanced in Nairobi, but moreover, by its very composition, a U.S. delegation that will send an unmistakable message to the other 155 nations attending this conference that the U.S. Government places a high degree of interest and importance on its national telecommunications issues and their impact on our country's interest at home and abroad; and finally, to develop strategies and implement these strategies through bilaterals and other efforts before the commencement of the plenipotentiary to insure that the United States is prepared for any eventuality that may develop at this conference.

After approximately 6 weeks as chairman, I am able to report some progress in meeting these three basic goals. However, I must candidly tell this committee that from my point of view, any chairman of a U.S. delegation is severely hampered when his or her appointment occurs less than 5 months before the commencement of a major, multifaceted telecommunication conference such as the ITU. This disadvantage is further exacerbated when the chairman, after 2 months, approximately 2 months as chairman, is not cleared, does not have a staff nor a budget. These to me are basic tools to do the job.

Accordingly, I have been playing a form of catchup ball, and while I am personally encouraged by some aspects of the exercise, there is clearly a great deal more to do before we attain the three basic goals outlined above.

Regarding interagency support of my efforts, I can report that cooperation from the involved segments of Government, including active support from Ward White and the staff of this committee, has been generally good. In particular the support of Chairman Mark Fowler of the FCC and Assistant Secretary Bernie Wunder of Commerce have been splendid.

Upon completion of my State Department clearance, which is expected hopefully this week, I have been assured by Secretary Buckley that I will have the full support of the State Department as we complete the final few months' preparation for the plenipotentiary. During this period before commencement of the U.S. participation in the plenipotentiary, I will continue to involve all of the resources available to me from Government and the private sector, and welcome any suggestions and support from this committee.

Thank you.

Senator **Schmitt**. Well, thank you, Mr. Gardner. I guess I am encouraged by the attitude that you personally represent in your statement, but I cannot say I am encouraged by some of the comments that were made relative to the support that you are getting. I have been kept informed of your progress, and we are certainly going to do everything we can from this side of the Government to assist you through a very difficult situation. If I had had my way, you or somebody like you would have been appointed 6 years ago to work on this conference.

Mr. **Gardner**. I agree.

Senator **Schmitt**. That may have been too late 6 years ago, but at least we would be in a far better position than we are today. That is the whole point of the subcommittee's efforts and the committee's efforts, to try to get some long-range planning going in this Government that can survive a change of administration. Even that is too generous, because within the administration there has not even been short-range planning of sufficient length on these kinds of conferences.

But the fact that you are conducting a thorough review of the options available to the United States and at the same time attempting to select a delegation that will be in a position to advocate U.S. positions, that is most encouraging, in spite of the very short timeframe that you have to work.

Now, your pending appointment, at least, was announced on April 28, as I recall, and you say you are still awaiting completion of your security clearance. Now, I know it takes a while to get security clearances through this Government, but this seems a little bit ridiculous considering that you are supposed to head a delegation to a conference of major significance to the United States. Has the failure to have this clearance hindered your work?

Mr. **Gardner**. Very definitely. For example, Senator, I am unable to read any of the 76 policy papers that are being prepared by an interagency working group led by the State Department.

They are simply not available to me. I have been assured week after week that I will be cleared and I can read them.

I have, in order to get around that roadblock, had a series of briefings from many of the people from Commerce and FCC, and also some people from State, although there is a reluctance to be fully candid with me because of the technical impediment on my clearance.

I might add that in 1972 I had full field top security clearance when I was working with Secretary Connelly, and since that time have been three times appointed to Presidential commissions which required updates of my clearance. The most recent appointment was by President Reagan to the Council of the Administrative Conference. So I feel there must be somewhere in the bureaucracy a rather substantial record, and I would suggest that I have not done anything all that controversial in the last decade that would present a problem.

Senator **Schmitt**. You have been talking to this committee, and that may be a problem for you.

Have you discussed this with Secretary Buckley?

Mr. **Gardner**. Yes, I have. I had a very fruitful and candid discussion with the Secretary last week, and I am convinced that he is pushing. I think there are other parts of the State Department, which is typical of any bureaucracy, which controls the action in this area.

Quite frankly, beyond clearance—that is only one thing—I need some career Foreign Service officers that are working in this field on a regular basis to staff me. I have been largely working out of my briefcase, and I brought a smaller one today just because it is very heavy, but I work in my law firm, and I can use resources there. I need a staff. I need professional men or women, a combination thereof, who are working with these issues, who have a reservoir of knowledge that I can build on, and the interagency group has been fine, but that is not where the action is at State.

Senator **Schmitt**. Do you have a secretary?

Mr. **Gardner**. No. I have a secretary in my law office who is about to cardiac arrest as a result of the fact that——

Senator **Schmitt**. I assume that he or she is not a Government employee.

Mr. **Gardner**. No, but a good American who sees this as an important opportunity to help our interests.

Senator **Schmitt**. Thank God for good Americans. Without them, the State Department would be lost.

Do you expect to be officially appointed as an Ambassador to cover the ITU Conference?

Mr. **Gardner**. Typically, you have a personal rank of Ambassador. I have been assured by even State Department officials that they feel I would be severely disadvantaged without that rank, because it conveys to the other attendees a certain importance that is placed on the delegation. You might be interested to know that in order to show the new level of interest we are placing on the delegation, I have secured the agreement of Bernie Wunder, Henry Revere, Commissioner of the FCC, Ron Franklin from the White House, and Bill Salmon from the State Department that they will all be senior advisers. While they cannot be in Kenya the entire time; that is, I think, a new degree of senior level involvement in the planning and the execution of the conference, and that goes to the same thing that the ambassadorship goes to. It sends a message. It says, we are very serious, we are coordinated, and we are going as a team, and there is no fragmentation in our effort.

Senator **Schmitt**. What is the status of that ambassadorial appointment?

Mr. **Gardner**. There has apparently been no action in that regard.

Senator **Schmitt**. Has Secretary Buckley discussed this with Secretary Haig? I realize Secretary Haig has a few other things on his mind.

Mr. **Gardner**. Senator, I would hope that after our discussion last week, where I was finally able to see Secretary Buckley and express to him my personal concerns, that that dialogue has taken place, but in view of other developments——

Senator **Schmitt**. Is this your first meeting with Secretary Buckley?

Mr. **Gardner**. Yes. I have been meeting largely with Bill Salmon of his staff, who has been very cooperative in terms of verbal support, but the resources have not been made available.

Senator **Schmitt**. And I gather by this that you feel that the ambassadorial appointment has been held up just because of inattention and inaction rather than any overt——

Mr. **Gardner**. It is hard for me to characterize it. I would say it is probably the former, but I am not able to see the entrails of the bureaucracy.

Senator **Schmitt**. If it is any consolation to you, I had a conversation with a gentleman last night who is in a reasonably high placed Government position, who finds the same thing, same problems in the State Department. Personnel action is apparently next to impossible in the State Department. I am surprised you are even here today, frankly.

Do you expect the private sector to be able to play a prominent part in your activities?

Mr. **Gardner**. Yes; I am very pleased with the progress. As my statement says, there has been progress in some areas. What I set out to do was to try to put together a balanced group from the private sector. I don't know whether it would be appropriate at this point to talk names, but I can assure you that the major corporations have been extremely supportive, and we are getting a level of personnel committed for the entire 6 weeks that is unprecedented, and I think it will contribute mightily to our successes, or at least an attempt to be successful, and moreover, it will also contribute to sending the message which we want to send with this delegation. It is just splendid. I could be more frank, but I think it would be premature, in terms of naming members of the delegation.

Senator **Schmitt**. I understand, but you are getting the cooperation?

Mr. **Gardner**. Very definitely, first rate cooperation, absolutely first rate.

Senator **Schmitt**. But it does not surprise me, but it is also very, very important that this country, because of our very unique approach to telecommunications within a free enterprise system be represented both by the Government and the beneficiaries of the system.

Mr. **Gardner**. Senator, I might add to the point you raised in your statement that it seems to be ludicrous that we would deny private sector people the opportunity to act as full delegates. I think they are great contributors, and the problem that may have originated this conflict of interest decades ago hardly seems relevant in our society where there is such open scrutiny of activities.

Senator **Schmitt**. Well, I could not agree with you more. The unfortunate provision in law that has been causing the difficulty is still there. We would hope that we can overcome that in time for the conference to proceed with their full assistance.

In your preliminary study of policy options available to the United States, do you believe that the United States must establish long-term policy goals and develop strategies that will insure that we reach those goals, or can we continue to go on a conference-by-conference basis without coherent policy bridges between?

Mr. **Gardner**. You may recall that during the transition I spent some time with you hearing your views when I was chairing the President-elect's FCC transition team, and at that time it was clear to me from numerous discussions, and quite frankly one of the recommendations of our transition report was that we develop some mechanism within Government that is long-term in focus and has the ability to be ongoing regardless of what changes in administrations occur.

In regard to this particular conference, it is clear to me that a body like the ITU with its current voting makeup is one that is fraught with potential peril for us unless we are doing other things to go into that conference that insure that the legitimate work of the conference takes place and not the political rhetoric and the divisive dialogue that could make an ITU counterproductive to our interests.

To achieve that goal going in so that you can have a constructive conference, you have to be doing all sorts of things, not just in telecommunications, but joint venturing in any number of areas, and that has to be a long-term goal to be credible to the people that would participate, and I see very little of that going on, and quite frankly, as chairman of this delegation, it gives me considerable heartburn that we are going in not better prepared from the long-term planning standpoint.

Senator **Schmitt**. Do you think there is any significant number of less developed countries in the world that feel that it is to their benefit to cooperate with the United States in telecommunications policy development?

Mr. **Gardner**. I would like to answer that question in more detail when I come back or a month or two from now when I have done some travel and talking. My guess is that we have missed a big bet, a good opportunity to let the LDC's, particularly the LLDC's, understand that we really care about helping them along in a way that helps us, too. And I would say to you that the example of the French and West German marketing in Africa alone shows where we are missing the boat.

So, I don't think that we have too much credibility with these countries as we go to the conference, and I think it is regrettable, because clearly we could.

In my conversations with industry leaders, we keep going back to that. I think industry would like to do a lot more, but I think we have to help point them in the right direction and make it clear that we want a quid pro quo out of it. We have an awful lot to share.

Senator **Schmitt**. So, I guess what you are saying is that in spite of the recognized technological capabilities in these areas and related areas of the United States, that the LDC's do not see that we have moved to make the benefits of those technological capabilities available to them, and as a consequence are really going their own way or organizing independently of the United States.

Mr. **Gardner**. That is right. That is my preliminary impression. As I say, I am not as informed as I hope to be in another month or two.

Senator **Schmitt**. I can just tell you that in 1973 and 1974, when I was doing a lot of traveling in the LDC's, there was a great expectation as a result of the Apollo successes and the worldwide publicity that that gave the United States technology—there was a great expectation on the part of the LDC's that we would then move to assist them in entering the twentieth century, not with a direct transfer of hardware, but with a transfer of know-how, and the benefits of that know-how, and enabling them to leapfrog some of the steps that we had to take when we were an LDC in order to reach our current status.

Obviously, almost nothing has happened in the intervening decade to change that except that the LDC's have drifted farther and farther away from our political sphere of influence.

Mr. **Gardner**. And others have moved in where we could have been.

Senator **Schmitt**. Do you think it is possible to recover under the current international regime, or is it too late?

Mr. **Gardner**. Well, as I say, I am not the scholar I hope to be in a few months, but I think there are some very practical things we could be doing that we are not doing in the short term, and I will give you an example of one that we have been discussing, and I have been talking to people at A.T. & T. and Comsat and others about it.

I think while we certainly do not want to up our subsidy of ITU until we see that at some point it is a better run organization, more sensitive to our goals, I think that in this climate the Federal Government could not possibly consider increasing budgets for things like the ITU, but I think there is a lot we can do.

The one example I would point to is using excess NASA space somewhere, having a fellowship school for LDC's or LLDC people who would be selected, for example, by the ITU members, 200 or 300 a year, have corporations such as A.T. & T., Control Data, and others staff a school, have a very intense program like a graduate school, multilingual. Maybe it would be down in Houston, where there is apparently some excess space. The Government's contribution would be the facility. The corporate contribution would be the lending of staff. The ITU or the country benefitted would send people at their expense. They would be here for 1 year. There would be a visa provision where they could not hang around and work for a U.S. company, or drive cabs when it was over, but they would have to go back to their own country, and they would be trained on U.S. equipment.

I think if we could give some credits, tax credits or something, to the corporate participants, it would be a great incentive to them because it would help their market and the people we would train would be informed technocrats in telecommunications in countries where there is a lack of this type of talent. That is something that I found several corporate people very receptive to. I have not seen anybody float it before. To me, it is outrageous. You know, it is a natural.

It is also something, if we get it rolling before, and I hope we will have this concept developed before Nairobi, it says to black Africa, it says to the LDC's, we really do care about you improving your telecommunications abilities, and I think there are any number of options like that, short term, midterm, and certainly long-term, that we can pursue that does not increase the Federal subsidy in these programs.

Senator SCHMITT. Well, that and many other ideas have been bounced off the State Department for 10 years, and that is exactly what happened. They bounced off.

Mr. GARDNER. Well, I hope they will not this time.

Senator SCHMITT. I hope you are right, but it may be, as I said last night, it may be that we will find that eventually we have to create a new international regime based on a better understanding, first of all, and second, a user-based telecommunications regime that is clearly to the advantage of any participant in that organization. It is not clear right now that the ITU can provide that kind of forum unless we are able to breakthrough the block voting that is for the most part an anti-U.S. voting block.

Mr. GARDNER. That is right.

Senator SCHMITT. What has happened to the recommendations of the transition team?

Mr. GARDNER. Chairman Fowler has implemented many of them in his deregulatory program on the domestic side. I think that the Chairman, who happens to be a good friend of mine——

Senator SCHMITT. Well, we will not say anything bad about him.

Mr. GARDNER. Well, I think if you look at the former Chairman of the FCC in the recent decade, he distinguished himself in the international area by really getting into it. He has had, apparently, a very good bilateral with the Canadians, and I think he has an interest. He has been very supportive of my efforts. And I would like to also add that Bernie Wunder has made not only himself available but some very, very capable people there, so I am getting very good support from the FCC and Commerce, and Mack Baldrige.

Senator SCHMITT. But at the highest levels of Government, the situation is not much different now than it was in the last administration, is that correct, in terms of understanding?

Mr. GARDNER. In terms of long-term planning or a mechanism to do the long-term planning, I do not see any change in the landscape.

Senator **Schmitt**. Would it be appropriate to create a pool of people that work periodically and continuously that would be the pool from which we draw our representatives and cycle people through that so that at any given time there is an informed corps of people that would also become the delegation?

Mr. **Gardner**. I think that is very important, that you have consistency in this type of thing. Right now, while I am trying to do it, for example, in this delegation, I have a fellow that was at NTIA, Ed Probes. Many of you have worked with him. He agreed to come aboard. He is now in the private sector. But I look to him because he was there in 1973, and he is a distinguished fellow, but you have to reach out. There is no easy way to insure the continuity that you are suggesting under the present scheme. It is very ad hoc.

Senator **Schmitt**. Well, there is no continuity. Isn't that correct?

Mr. **Gardner**. I can speak to this conference, and we will have continuity, but you have to reach to get it, in terms of players.

Senator **Schmitt**. There is continuity only because the players were there, but they have not been kept active.

Mr. **Gardner**. That is right.

Senator **Schmitt**. As an active unit between conferences.

Mr. **Gardner**. That is right. It ends when the conference ends or shortly thereafter.

Senator **Schmitt**. Is the State Department procedure for making appointments to the delegation going to allow you to have a full delegation by the time the conference comes around?

Mr. **Gardner**. I have been working with some people at the White House, as well as the State Department, and when I took this job, quite frankly, reluctantly, that was one of the things I was assured of, that we would have a delegation. That assurance came from the White House.

Senator **Schmitt**. Got you, too, huh?

Well, Mr. Gardner, we will do everything we can to help you.

Mr. **Gardner**. Thank you, Senator.

Senator **Schmitt**. Thank you for your candor and the information today, and we would hope that we can at least be kept informed of your preparations without interfering in those preparations in any way.

Mr. **Gardner**. I welcome, and as I say, Ward and the staff here have been very helpful. Committee suggestions are very welcome.

Senator **Schmitt**. Thank you. Well, I am glad there is somebody on board who recognizes how totally significant these international telecommunications activities are to our future national economy, our future national defense, and literally to I believe the survival of freedom because if things continue to go the way they are, every nation and every group of nations is going to have a barrier to the free flow of information, to the use of information, including that which can benefit their own countries.

Mr. **Gardner**. That is right.

Senator **Schmitt**. Independent of what their politics may be currently. And if the world becomes that compartmentalized, it is going to be very, very difficult for this country and the rest of the free world to deal with the world on its terms.

Mr. **Gardner**. Clearly, it is the most affirmative tool we have, and I do not think we are using it the way we could or should.

Senator SCHMITT. It is interesting to me, as a final comment, that the country that has benefitted most from freedom in communications is the least prepared to deal with communications in these international conferences, whereas those countries that for whatever political reasons they may have wish to control the flow of information are putting far more effort and time into these conferences than is the United States specifically. We had better wake up pretty fast or we are going to find there is nothing left for us to use on the international basis and again, we will have to be forced into a totally new approach to our own communications, as well as international communications.

Mr. GARDNER. I agree with you.

Senator SCHMITT. Thank you, sir.

Our next witness is William McGowan, chairman of the board, MCI Telecommunications, and I wonder if I could ask Mr. Stephen Doyle, director, advanced planning, Aerojet, to come forward also and we will hear both of you together this morning.

Mr. McGowan?

STATEMENTS OF WILLIAM G. McGOWN, CHAIRMAN OF THE BOARD, MCI TELECOMMUNICATIONS; AND STEPHEN E. DOYLE, DIRECTOR, ADVANCED PLANNING, AEROJET LIQUID ROCKET CO.

Mr. McGOWAN. Thank you, Mr. Chairman.

Ten years have passed since MCI began to serve its first customers between Chicago and St. Louis and competition in the United States' long distance market became a fact of life. These 10 years have seen an explosive growth in the size of the market and the number of participants and in the variety of service offerings available. Competition, while pioneered by MCI, is having its intended effect by giving the American consumer a choice among many vendors offering a range of cost-effective services.

MCI believes that competition is both feasible and inevitable in international telecommunications services as well. Pressures in the form of user demand, changes in government policy, and the availability of low cost, innovative services from alternative suppliers are building up and cannot be ignored for long. Legislation such as S. 2469 will help in establishing competition as a fact of life in the international arena so that a decade from now, all consumers will be enjoying its benefits.

MCI is now on the threshold of extending its competitiveness and innovation into the international telecommunications markets. Later this month the Federal Communication Commission is expected to act on our proposed acquisition of WUI, Inc., one of the major international record carriers. This acquisition will allow us immediate entry into some aspects of the international market, and we fully intend to expand that entry until we can offer a full range of services to our customers.

The first ten years of MCI's growth was accomplished despite protracted and sometimes bitter regulatory and court proceedings in which the very existence of competition was always at issue. At considerable expense in both time and money, it is now clearly established that competition is the norm in the domestic telecommunication industry.

However, without a clear statement by the Congress that U.S. policy favors competition in international services, such as that contained in S. 2469, many of these battles may have to be refought and relitigated.

While the FCC has made attempts to encourage new entrants, primarily in record services, its proceedings are slow and cumbersome and its policies are subject to constant change. As a general rule, MCI believes that the FCC has no business allocating markets among carriers. Unless there are specific statutory prohibitions to the contrary, the presumption ought to be that entry is permitted into any market. The Commission's limited resources would be better utilized in overseeing the international market, promoting competition in international markets and insuring that dominant carriers do not abuse their market power at the expense of smaller competitive carriers.

Legislation such as S. 2469 would establish this presumption in favor of entry and thereby eliminate the squandering of carrier resources on unproductive regulatory and judicial proceedings—resources which should be spent in providing service to users.

The United States, of course, can authorize but not unilaterally implement a policy of competition in international services. Other sovereign nations have an equal say in how these services will be provided, and until now have resisted reaching operating agreements with new carriers. There is increasing evidence, however, that the American telecommunications revolution is having a similar effect to that created by our political revolution in 1776.

First, it is incorrect to say, as many still do, that foreign administrations flatly reject the idea of interconnection with new market entrants. In recent years, MCI has participated in a number of discussions with numerous governments which have been watching the American experience with a great deal of interest. Many of them have begun examining their own policies and procedures in light of our experiences in the United States. In fact, a few have openly expressed their intention to try new arrangements with new carriers. In time, these new ideas would inevitably spread.

Second, one of the most important reasons for the American telecommunications revolution is becoming increasingly apparent abroad as well—the growing dependence on communication to conduct business and to maintain social ties. As communications services become more crucial and play vastly larger roles in commerce and in private lives, the demands for better, more sophisticated and more cost-effective services quickly outstrip the ability of any one entity to keep pace. Just as in the United States, it will be customers who will force the revolution through, even if governments resist it.

Third, MCI intends to provide the economic incentives for foreign administrations to want to interconnect with our services. Over the years, MCI will increase its penetration of the United States market and will have a substantial percentage of the business and residential customer base. These will be the customers with highest demand for international services as well. With that customer base, we will have the capability to deliver significant and growing amounts of overseas traffic to those administrations willing to deal.

MCI believes that there are foreign administrations willing to participate in new service arrangements. And we believe that the example of the benefits to be derived from such arrangements will convince other governments, on their own or at the behest of their users, to make similar arrangements.

Congress began the process of addressing issues of industry structure with the enactment of the Record Carrier Competition Act of 1981. The crucial provisions of that act were the requirement that record carriers tariff their domestic and international record services separately and that carriers will be given a proportionate share of inbound traffic. Thus, domestic carriers without international operating agreements can offer through services, compete on an equal footing for a share of the market, and establish a customer base. As explained above, and as illustrated by the recent successes of Western Union, the customer base is one of the crucial elements in obtaining an operating agreement.

A similar arrangement should be implemented for international voice service as well. A.T. & T., at present, offers international MTS as a monopoly under a bundled tariff. A.T. & T. should be required to offer its domestic and international services under separate tariffs and to provide nondiscriminatory interconnection to other carriers. Similar requirements should apply to Comsat if it is permitted to offer services on a retail basis.

While we understand that this was the intent of the drafters of S. 2469, MCI believes that this intent needs to be made more explicit.

With the telecommunications revolution about to spread internationally, a clear statement by the Congress that U.S. policy favors competition in international services will eliminate the loss of valuable time and resources in regulatory and court proceedings here in the United States. A pro-competitive policy would be reflected in U.S. negotiations with other nations about the nature and the number of suppliers of communications service. Such a statement of policy will encourage other nations to consider alternative suppliers so that all consumers eventually will enjoy the benefits of choice.

For these reasons, MCI supports the enactment of legislation such as S. 2469, which would clearly establish U.S. policy as pro-competitive and which would establish fundamental ground rules for the competition.

Thank you.

Senator SCHMITT. Thank you, sir.

Stephen, would you like to proceed?

Mr. DOYLE. Thank you, Senator. It is both a pleasure and an honor for me personally to be invited to present my views on S. 2469. I thank the subcommittee for inviting me.

Senator SCHMITT. You are going to summarize, of course?

Mr. DOYLE. Yes, sir. Three minutes.

Having spent more than 15 years in Government service and serving in five different agencies, including the White House Office of Telecommunications Policy and the Congressional Office of Technology Assessment, and having spent many of those years directly involved in aspects of Federal regulation, policy formulation and implementation concerning international telecommunications, I have a number of experience-based views on the bill.

I want to begin by commending you, Mr. Chairman, and Senators Cannon and Goldwater for the submission of this bill, which I think is an excellent vehicle to stimulate the attention, the discussion, the thought, and the actions that Senator Goldwater called for in his introductory remarks on the floor of the Senate.

Government action on international telecommunication policy and organization is needed and it is needed now. That action must be clear and it ought to be decisive. We may differ on particular aspects of the actions proposed, but I sense a strong consensus in Government, in industry and among interested citizenry generally on the need for policy clarification and U.S. Government-strengthening action.

This morning I am only going to topically highlight some of my principal views on the bill in summary form. They are elaborated in the text which follows, which I have submitted for the record. If it would serve the subcommittee, I would be very happy to further elaborate on any of these points in greater detail for later submission in writing. I have basically 10 points, Senator. I will just present those.

One: Any law addressing international telecommunication policy must be succinct, clear and understandable because it must be comprehended by, in addition to our own industry and government, the government officials and operations officials in more than 150 foreign countries. Therefore, the law should be simple and direct. Leave the details, the exceptions, the procedures and the penalties to the elaboration and implementation of our national regulatory machinery.

Two: Competition in the international telecommunication service sector will prove, over time, to be counterproductive to the interests of this country. We exist in a real world. It is made up of nations which, for whatever reasons, have generally consolidated their international telecommunication service operations into the hands of a single entity in each country. Our proliferation of entities, and indeed the proposed competitive proliferation, will not be practicable in the long run in such an environment.

Three: The concept of fair competition is misused, distorted and of little value in this industry and it does not work. Neither in the 1960's, nor in the 1970's, nor today, in the 1980's, is there true price competition among the alleged competing carriers. The FCC has seen to that.

Four: The legislation in this area should not ignore past legislation and experience in our international operations. I think that the criteria for reciprocal arrangements with foreign governments set forth in the Kellogg Act, contained particularly in title 47, chapter 2, section 35, have stood the test of more than half a century of utility to this Government, and I think that they still stand as good basic criteria for determining appropriate reciprocity.

Five: The U.S. Government agencies charged with policy formulation and implementation are inadequately funded, they are poorly organized, and they are lacking in clout. The polycentric decisionmaking that we do in this country today is time-consuming;

it is compromise-laden; it is often only weakly serving the national interest.

Six: Telecommunication policy is so central to our national strength, vitality, and survival as a nation that it should be centrally managed in the executive branch by an authority reporting directly to the President of the United States. This job simply cannot be done by a committee or committee-like structures. In a committee, no one is responsible for the ultimate action. In a committee, no one is to blame.

Seven: History has repeatedly taught us that no national consultative or advisory body created to provide policy advice or guidance can be effective in this arena if it is either all government or all industry.

Eight: A presidentially appointed national telecommunication policy advisory council involving government, industry, labor, academic and public representation should be considered.

Nine: We do not need to study the problems any more. We have been studying these problems since the Second World War. They have been studied to death. What we need now is some decisive action.

And ten: There should be an assistant secretary of state for telecommunications.

Mr. Chairman, these are the nuclei of my principal views. I thank you again for the opportunity to be here, and I would be happy to answer any questions you or others may have.

[The statement follows:]

STATEMENT OF STEPHEN E. DOYLE, DIRECTOR, ADVANCED PLANNING, AEROJET LIQUID ROCKET CO.

INTRODUCTION

It is a pleasure and an honor to be invited to present my views on Bill S. 2469. Thank you for inviting me. Having spent more than 15 years in government service, serving five different agencies, including the White House Office of Telecommunication Policy and the Congressional Office of Technology Assessment, and having spent many of those years directly involved in aspects of federal regulation, and policy formulation and implementation, concerning international telecommunications, I do have a number of experience-based views on the Bill.

To begin, I commend you, Mr. Chairman, and Senators Cannon and Schmitt, for submission of this Bill, which is an excellent vehicle to stimulate the attention, the discussion, the thought, and the action you called for in your introductory remarks. Government action on international telecommunication policy is needed; it is needed now; and it must be clear and decisive. We may differ on particular aspects of actions proposed, but I sense a strong consensus in government, in industry and among interested citizenry, on the need for policy clarification and U.S. Government-strengthening action.

The decade of the 1980's will see expanding, if not accelerating, growth in the global industrial base and the national communication systems capacities that feed, and demand services from, international telecommunication systems. This growth will magnify the importance of institutional actions of the International Telecommunication Union. It also will demand the best representation we can muster to reflect and protect our national interests. We have a decade of challenges before us, and the Congress is well advised to address our national need to meet those challenges.

SUMMARY OF VIEWS

This morning, I will topically highlight some of my principal views on the Bill in summary form; they are elaborated in the text that follows, which has been submitted for the record. If it would serve the Subcommittee, I would be happy to further elaborate any of these points in greater detail for later submission in writing.

(1) Any law addressing international telecommunication policy must be succinct, clear and understandable; because it must be comprehended by government and operational officials in more than 150 countries with whom we communicate every day. The law should be simple and direct. Leave details and exceptions, procedures and penalties to the elaboration and implementation of your national regulatory machinery.

(2) Competition in the international telecommunication service sector will prove, over time, to be counterproductive. We exist in a real world, made up of nations which, for whatever reasons, have generally consolidated their international telecommunication service operations into the hands of a single entity in each country. Our proliferation of entities, indeed competitive proliferation, will not be practicable in the long run in such an environment.

(3) The concept of "fair competition" is misued, distorted, and little value in this industry and does not work.

(4) New legislation in this area should not ignore past legislation and experience in international operations.

(5) The U.S. Government agencies charged with policy formulation and implementation are inadequately funded, poorly organized and lacking in clout. The polycentric decision-making we do is time-consuming, compromise laden, and often only weakly serves the national interest.

(6) Telecommunication policy is so central to our national strength, vitality, and survival, that it should be centrally managed in the Executive Branch by an authority reporting directly to the President. This job cannot be done by a committee or committee-like structure. A Department or Ministry of Telecommunication exists in almost every country of the world; such a focal department is needed in the United States of America.

(7) History has repeatedly taught us that no national consultative or advisory body created to provide policy advice or guidance, can be effective in this arena if it is all government or all industry.

(8) A Presidentially appointed National Telecommunication Policy advisory Council, involving key government, industry, labor, academic and public representation should be considered.

(9) We don't need to study the problems any more, they have been studied sufficiently. Telecommunication policy boards, councils, committees and commissions have abounded in recent decades. Consolidate what is known, don't reinvent the wheel.

(10) There should be an Assistant Secretary of State for Telecommunications. The foreign policy and foreign relations ramifications of our behavior in the international telecommunication environment have global impacts. We must deal globally with such issues. A senior State Department official should manage that role in our government.

Mr. Chairman, these are the nuclei of my principal views. I thank you again for the opportunity to be here. I will be happy to answer any questions you or others here may have.

Senator SCHMITT. Thank you, sir.

Mr. McGowan, would you care to comment on those comments about competition?

Mr. McGOWAN. I certainly would, Mr. Chairman. The comment that it is not practical to have competition in telecommunications I think has been proven false in this country. We have had more services available to our people, more variety of services for both voice, data. I think it has spurred in this country existing de facto monopoly, A.T. & T., into they themselves being more responsive and they themselves coming up with better services and better prices.

On the international side, there is nothing inherently different between a voice or data message, whether it is from Phoenix to Boston or whether it is from Chicago to London. Inherently, the technology is basically the same. You do have a different political situation.

It is not true that the world has gradually consolidated their telephone system into a Government-owned monopoly. It originated that way. Basically it was not the policy per se to do it.

You find it unraveling, however. They have found around the world in many instances it was not working very well. In the case of Australia, for example, where they had one monolithic entity, government-owned, they have now a completely separate, unrelated organization, Overseas Telecommunication Corp., to handle their international communications. That organization has proved so effective that they recently have been given the responsibility of handling the satellite venture for Australia.

In the case of France, when they started a satellite venture, they created a separate corporate entity to do that. They had originally intended even to have minority stockholders, consisting of users and employees of that venture, so there would be even a separate stockholder base. I do not know what has happened to that decision since the Mitterand government has come into power.

In England, as another example, they have recently authorized a new venture called Mercury, a consortium of British Petroleum, Barkley's Bank and Cable and Wireless, to build and operate a long-distance competitive system in England. England has opened up competition for equipment, which previously had been the dominance of the British Post Office. They have taken the British Post Office and they have split it apart. You have now British Telecom, unrelated to the British Post Office.

So these rules are changing over there, in recognition of the new needs and the dominance of communication. I don't see that as an example of why you cannot have introduction of different telecommunication suppliers.

Senator SCHMITT. Your position is that the U.S. example, in spite of the previous existence, still the existence of monopolistic government-controlled entities in most of the other countries of the world, the U.S. example, the success of that example, is having a reverse effect?

Mr. McGOWAN. Absolutely. It is having an effect on the overseas PTT's and the governments involved and the users. I don't want to forget the users because they are in many ways the cutting edge of this. They say I can get it in the United States, why can't I get it here? And it is having an effect on people. They say let's try new things. A lot of them are as unhappy with a sole supplier as we gradually developed unhappiness in this country with a sole supplier.

So I look at the airline industry. Originally no one said well, you can only have one U.S. airline flying to overseas points. We have not had difficulty with having other airlines make arrangements to serve various countries, whether they were charter, supplementary airlines and other airlines. It can work. There is no need for a sole supplier in that.

Now it is not as easy as if you had one, but it is going to be more efficient. Certainly sometimes competition does cause troubles. It does remove that very easy life of a monopolist, a very comfortable life. And so it does cause the overseas PTT's to say my heavens, I have to deal with more people. But it can and it will effectively work.

I think part of the answer to that first question is also in the second comment I believe made by Mr. Doyle, that there has not been effective price competition overseas. Well, there has not been as such. A.T. & T. has had a monopoly on voice communication, and the record carriers have had basically an arrangement or practical requirement that they have the same price. So they have competed on features of service as much as anything else, which is certainly a form of competition.

But that has changed now. There will be price competition in international communications. MCI has demonstrated you can effectively have price competition. You can go out of your way to build and operate more efficient systems and pass those benefits on to the consumers.

In my conversations with a number of overseas governmental people, people operating their telecommunications, they are receptive to that idea. You don't need to have one color. You don't need to have pistachio and that is all we offer. You can offer other features to telecommunications services. Maybe some of them are not quite as good a service, but maybe you can save a lot of money. Maybe some of them offer features that no one else is offering, and people like those features.

So there can be service as well as economic price competition. There is here in the United States. I take a look at the prices of long distance service now and as I am sure you see in the paper, you have a choice of four or five different prices. And maybe you have to judge whether you are getting four or five different qualities. That is up to you to choose.

In various new communications services, like we are in the process of starting a plan to introduce domestic data services which will have different features from Telenet or as announced yesterday, American Bell offers. It will offer a customer variety, and that is the essence of competition.

As far as some of the other comments, I don't disagree. I think the United States has not been represented properly.

Senator SCHMITT. I was mainly interested in the competition statements.

Mr. Doyle, would you like to rebut?

Mr. DOYLE. Just one short rebuttal. Thank you, Senator.

I think Mr. McGowan is in all earnestness saying what he believes to be the case, but he is absolutely mistaken on his history. The fact is, in global communications since the middle of the 19th century, this industry grew up in competition. There were multiple carriers in most of the countries when the telegraph grew up as an international entity. There were contemplations of competing transoceanic telegraph cables in the 1860's and 1870's. There simply was not sufficient capital to make them happen.

We went from a period of intense competition in this country during the latter 19th and early 20th century, to a situation of consolidation: For economic efficiency, for governmental control purposes.

I think when Mr. McGowan makes two points, he has conceded my argument. First, he said that each foreign administration will be happy to interconnect with new carriers to the United States. He did not at any time say that MCI would open an office in

London or in Paris or in Stockholm, and we will not see such an office opened in our lifetimes, simply because the Government is the internal carrier to the outside world.

Senator SCHMITT. So you don't see a breakdown of that as a consequence of the U.S. example?

Mr. DOYLE. I do not, sir. I see that the governments in most countries of the world jealously guard the control, management and operation of their telecommunications facilities, for a variety of reasons.

Senator SCHMITT. So when they spin off a new entity out of the British Post Office or out of the Australian, it is still a government entity; is that what you are saying?

Mr. DOYLE. Yes, sir, and it was to stem the flow of subsidies between the telecommunication part of the house and the postal part of the house, and you know that in most countries in the world, there are PTT's, postal telecommunication telegraphic administrations, and they are subsidized.

Senator SCHMITT. You don't expect it to go any farther than the spinoff of a governmental entity from a governmental entity?

Mr. DOYLE. I do not, Senator. On the point in France——

Senator SCHMITT. You don't think they will experiment with versions of free market competition such as we have in this country?

Mr. DOYLE. I believe it will be experimented with, yes, sir, but I do not think that U.S. industry will be invited onto foreign territory to compete with the host government. I just do not see that happening. It is not rational. I don't know a government in the world that would be interested in setting up MCI or Western Union or RCA or anyone else to compete with them in their own country in order to stimulate innovation and bring down prices, which is what competition is supposedly all about.

Senator SCHMITT. What about nongovernmental competition within their countries, generated within their countries?

Mr. DOYLE. There is a possibility that they may allow joint ventures. There is a possibility that they may experiment with the economic development, given the rapid increases in growth that we have experienced since the Second World War, with this industry growing at rates between 15 and 20 percent and sometimes in excess of 20 percent a year in volume. And that rapid growth requires a lot of capital investment.

One way to get that capital is to turn the industry loose to invest it. Government runs short of money from time to time, as you well know, sir.

Senator SCHMITT. It never runs short of ideas on how to spend it, though.

Mr. DOYLE. The point on France and the setting up of a private corporation to collect and control investment in capital, it was the last point that I just made that drove that decision. The corporation that was set up in France was not to compete with the PTT. It was to extract from money markets in France and other countries sufficient capital to invest in new capital resources to improve and update the telecommunications services in France. All such services are provided through governmentally owned, governmentally controlled facilities.

Senator SCHMITT. But there is a competition afoot now and abroad that is competition in services, even though there may be price control; is that correct?

Mr. DOYLE. Yes, sir. I believe that there is. It is emerging. It is in a handful of countries, and I doubt that——

Senator SCHMITT. There is a tremendous opportunity for innovative companies, like MCI and others, to move into these markets to offer something that the country at least initially wouldn't have for themselves but there is a demand for.

Mr. DOYLE. The only advice I could offer on that point would be for the president of MCI and the chairman of its board and its investors to put yourself in the position of the correspondent with whom you are dealing.

Mr. McGowan said that they will enter these markets by offering economic incentives to the foreign administrations. I suspect that the economic incentive they will offer to break into new markets is something less than a 50/50 split on revenue, because a 49/51 split will surely buy them in. And right away, we start losing and the foreign administration starts gaining. When a carrier, in order to get into a market, accepts less equitable arrangements than the present carriers in that marketplace, we will ultimately lose in our national interest. I see that is the way it will go.

Senator SCHMITT. Mr. McGowan, on that last point?

Mr. MCGOWAN. On that last point, I think anybody can always conjecture why a government run, regulated, controlled entity is so pure and clean. You don't have these messy people running around trying to compete, and they cause disruptions, economic disruptions, as Mr. Doyle just pointed out, potentially.

But I think the essence of it is way beyond his concern or his concern about some other government's particular attitude to us. I think that if the United States expresses its policy to be procompetitive, it will have an impact, not on everybody and not for a period of time, but on sufficient countries that will infect the next country with the benefit of having some other supplier.

If MCI can figure out how to operate at less expense to the user, then the market is going to get bigger. It isn't only that you have to have fixed pricing to be able to make money. You can stimulate the market, as we do. We see a high growth among our users. And I think the essence of competition is to be able to say you cannot predict ahead of time how it will operate, and I don't think we should try to do it here. I think we should state our policy.

I do want to correct the record. If Mr. Doyle thought what I was proposing is that MCI was going to go to France and build and operate an internal long distance network in competition, that was not my proposal.

MCI right now is a U.S. common carrier. We will be an international common carrier from the United States to the rest of the world. We hope to provide at this stage competitive services for our customers to the rest of the world and allow them to use us, coming back in this direction. We weren't proposing internal situations.

Senator SCHMITT. Well, this has been a very interesting discussion. I hope that McNeil and Lehrer are eating their hearts out.

Maybe they will ask you to come on their show and go through the same discussion. I think it is very illuminating.

Mr. McGowan, it is my understanding that we now have the administration, A. T. & T. and MCI on the same side in opposing H.R. 5158. Is that true, and how in the world did that come about?

Mr. McGowan. It is true. It is not a sign of——

Senator Schmitt. This is the H.R. 5158 that we have all come to know and hate, right? And not necessarily what is being worked out in current negotiations.

Mr. McGowan. That is right. It is not a sign of a second coming, Mr. Chairman. And I would like the record to show that I have not changed my opinion about it. Charlie Brown has changed, I think, his opinion closer to mine.

We disagree with it. We think that with the administration's success on January 8 of this year on the settlement of that antitrust case, which I think was a major, major victory for competition, for people in MCI's position, and I frankly think in the long run for A.T. & T., that a lot of——

Senator Schmitt. There is still some doubt about the consumer, but we will wait and see on that.

Mr. McGowan. I think the consumer is going to find it very beneficial. A lot of the contents of H.R. 5158 either became irrelevant or frankly were mischievous, because H.R. 5158 basically says that they are going to try to undo what the Department of Justice has been successful in, that is, separating out what is a monopoly versus what is competitive.

By opening up the local Bell operating companies, you re-create the cancer that has caused this ongoing, continuing violation of the antitrust laws.

The authors of H.R. 5158 don't understand the essence of a competitor. When the Government said to A.T. & T., you be competitive—equipment, long distance—a competitor uses whatever power he has to compete. If that power happens to be monopoly control of some aspect of the business, they use it, and they did use it.

So this settlement breaks that apart, and then H.R. 5158 is trying to put it back together again in a lot of Bell operating companies, the same inherent power which caused their problem to begin with.

Second, H.R. 5158 is now smearing around money through the industry for ostensibly good social purposes. They are putting taxes on people who make long-distance calls way above the cost involved with it. Clearly you cannot have a competitive world if you don't have cost-based pricing and a structure to allow it to happen.

Senator Schmitt. You are speaking of an access charge?

Mr. McGowan. Access surcharges. I have always believed that there could be some social reasons for an access surcharge.

Senator Schmitt. You are concerned that it can become excessive and——

Mr. McGowan. And it is uncontrollable.

Senator Schmitt. I believe that we have taken those kinds of concerns into account in S. 898, but only time will tell.

Mr. McGowan, next week the FCC is expected to give final approval to MCI's acquisition of Western Union International. How do you propose to use Western Union's established place in the record market, or is that giving away trade secrets?

Mr. McGowan. No, it is not. A lot of the mechanics of how the process will work will depend upon their decision, of what kinds of restrictions if any would there be in the relationship between us and WUI. I don't really see why there should be, but there may be some separation requirements imposed on Certainly the tendency of the FCC in the decisions lately would indicate that they would not do so.

What we hope to do is to use the established relationships that WUI has in 180 countries I believe at this stage, where they are very well received as a record carrier and an innovative carrier in data communications, to use that as an opening door if you will, a way for us with what MCI has been doing, to go to those countries and say that we want to now add onto it, using MCI's technology, MCI's know-how and MCI's 800,000 customer base, to be able to start offering other types of interconnection, principally voice, switched voice, into those countries.

WUI will certainly help us open the doors and make introductions and allow us to have a technical presence in those cities. WUI has close to 220 people, I believe, living and working around the world.

I am sorry to tell you, Mr. Doyle, we do have a big London office successfully working today. Where you do work, you work with customers and with the engineers and you design a system, design the circuits, and we hope to use them as an excellent bridge in that regard.

Senator Schmitt. Assuming the decision goes the way I have stated and the way that MCI apparently would like it to go, isn't this a major step toward removing the distinction between voice and record in international——

Mr. McGowan. If we are successful in those negotiations, yes, I believe it will. It will take some cooperation on the part of the FCC to be able to do that, and I would hope that they would fulfill the mandate they have been expressing very well lately to try to encourage that.

Senator Schmitt. And you presumably are for that?

Mr. McGowan. We presumably are very much for that.

As you very well know, Mr. Chairman, when you start doing things like digital modulation, both satellite or fiberoptics and cable, you end up with no distinction. As far as the datums are concerned, the bits are concerned, they don't know whether there is data on them or whether there is a voice on them. It is a difference without a difference. Technology has just overwhelmed any supposed difference in it.

There certainly is a difference from the point of view of the subscriber, but from the point of view of the practical technology involved, there is no difference.

Senator Schmitt. Mr. Doyle, your testimony cites the need for advisory group guidance, and I touched on that in my discussion with Mr. Gardner, such as the National Telecommunications Advisory Council, and I presume if such a council existed, it could be that same core group that participates in international negotiations. Would you agree with that?

Mr. DOYLE. Yes, Senator. I think it could serve a variety of very substantial contributory roles to our national policy development, preparing recommendations for the Government's consideration in the legislative arena or in the regulatory arena.

I think that we do lack a central coordinating forum in which the industry and the Government sit down on a noncontroversial basis—that is, where someone is not trying to prove a point, but where they are mutually trying to advance the national interest. I know of no forum wherein Government and industry today, with their shared responsibilities, the Government for regulation and foreign policy and foreign relations, and the industry for investment and operation, where they sit down and mutually bring the collective talent that they represent to bear on our national interest problems.

Senator SCHMITT. Are you familiar with the task force concept we have in S. 2469?

Mr. DOYLE. Yes, Senator. My basic complaint about your proposed task force is that it is limited to Government-only participation, with an external and totally separate advisory committee, the views of which the task force has to take into account or explicitly explain why it does not wish to take them into account, and I think you have established an unduly layered mechanism which will add to the time consumption for decisionmaking and in this world and during the next decade will intensify, not reduce.

Senator SCHMITT. I suspect you are right. However, we would have to make a specific total amendment to existing law in order to have it a joint committee. But that is no reason to avoid the issue.

Mr. DOYLE. Recognizing that that is a substantial effort, Senator, I think it is well worth the effort if you could pull that off. You would have a tool that could serve this Government's interest very well and this country's interest very well.

Senator SCHMITT. Mr. McGowan, do you have any problem with the concept of that permanent advisory council or task force, or whatever we want to call it, that has specific statutory responsibilities in telecommunications policy?

Mr. MCGOWAN. I would encourage that very much. I would certainly also encourage absolute inclusion of industry. It happens today but it is a lame way of doing it. As you probably and everybody I am sure is aware, the overseas entity goes to the private sector and asks—what do you do and how are we doing, how should we work together, what is happening, what is the best way of doing it? It is kind of like done through the back door or outside in some kitchen, smoke-filled room, which makes no sense at all.

Senator SCHMITT. Given our mutual and somewhat disturbing experience with the State Department, Mr. Doyle, should this advisory council report to an assistant secretary for telecommunications, as has been suggested, or to someone directly in the White House?

Mr. DOYLE. I think it should report to someone directly in the White House, preferably the senior incumbent in the White House.

Senator SCHMITT. Senior incumbent?

Mr. DOYLE. The President of the United States, yes, sir. I would like to get the layers out.

Senator **Schmitt**. You have been in telecommunications too long. You are starting to speak in quotes.

Mr. **Doyle**. Senator, there is a simple point there, and that is that we have layered our advice so that it has to come up through a series of filters. And the people who make the decisions are not in direct communication with the people who know what they are talking about. We have a whole lot of interpretations going on in the interim, and those interpretations are defeating our national interests.

Senator **Schmitt**. What about an assistant secretary for telecommunications in the State Department? Does the State Department need that level of visibility?

Mr. **Doyle**. Yes, sir. Because of the ubiquitousness of telecommunications, it affects every aspect of our economic life. It is fundamental to our national security.

Senator **Schmitt**. Why should that be in the State Department, with their track record? Why not have it in Commerce?

Mr. **Doyle**. Because Commerce is not responsible, sir, for the conduct of foreign relations.

Senator **Schmitt**. Well, neither is the State Department, apparently, in this area.

Mr. **Doyle**. I think if we look at the presidentially delegated responsibilities under the Constitution, we will find that they are—they may have done a very poor job——

Senator **Schmitt**. I have only been around really associated with four administrations, and you and I of course were associated with one together, and I have not yet seen any sign that the State Department is capable of exercising that responsibility. There is something missing in every State Department that causes them to be absolutely blind to this issue.

How can we expect that to change, just by insisting there be an assistant secretary for telecommunications?

Mr. **Doyle**. What it requires, Senator, is people like yourself, people like Senator Goldwater and others, people in the administration in key positions, people like E. William Henry, people like Dean Burch and others. Whether they are Republicans or Democrats or Independents——

Senator **Schmitt**. No, this is independent of party.

Mr. **Doyle** [continuing]. People who recognize the need for change and who are willing to put themselves and their ideas and their jobs on the line to cause a large bureaucratic structure to change.

In the State Department we have an office director for telecommunication policy who reports to a Deputy Assistant Secretary of State for Transportation, Telecommunication and Maritime Affairs. That Deputy Assistant Secretary of State spends 90 percent of his time on those international airline competitive problems that Mr. McGowan claims don't exist, and consequently has no time for telecommunications.

He then reports to an Assistant Secretary for Business and Economic Affairs, who reports to an Under Secretary, who reports to the Secretary.

Telecommunication policy in the State Department today is at the fifth echelon, and it should be at the second echelon, to be effectively handled.

Senator SCHMITT. Well, in almost all other countries it is the first echelon, right?

Mr. DOYLE. Yes, sir. And I say that in the executive branch, independent of how we deal with other governments, there should be an executive agency.

Senator SCHMITT. Yes, but how do you deal with the fact that so much of this is really coming down to a question of trade? Should Commerce also have an assistant secretary for telecommunications that can walk hand in hand with the State Department?

Mr. DOYLE. Commerce today does have an Assistant Secretary for Telecommunications and Information, and he is the Administrator of the National Telecommunications and Information Administration, but his staff has been so curtailed, his resources have been so restricted, that he has been left essentially powerless in an extraordinarily demanding time, with very little resouces to respond.

I put that not to his fault, but to the lack of OMB support and to the lack of congressional insistence upon the strengthening of that body, and of the necessary State Department capacity to do this job right.

We simply don't have the resources allocated, Senator. They are very important. You have said so. Your colleagues on this committee have said so. But we have got to get the resources allocated to get the job done.

Senator SCHMITT. Mr. Doyle, you were the program manager of OTA for its study of the impact of the 1979 WARC. That report may clear the need for this high level Government policy coordination. It also called for some clarification of Executive Order 10246, and I assume you have reviewed that part of S. 2469 that calls for the formation of an interagency task force on telecommunication information.

Do you think, in addition to what you have already said, and assuming that we work out the private-public difficulty that you mentioned, that this task force would be sufficient?

Mr. DOYLE. I think it would be a significant additional aid in getting on with the job. I think right now what we lack is focus in the Government. There is no central place you can go to say——

Senator SCHMITT. So with your council, with an Assistant Secretary in Commerce that can act in fact as well as in name, with an Assistant Secretary in State that can act in fact as well as in name, you think that we would have the infrastructure in the Government that would begin to get us off the dime in this area?

Mr. DOYLE. I believe that would be a major step, more than one small step for mankind.

Senator SCHMITT. But with a major key being private sector involvement in the council or task force?

Mr. DOYLE. Yes, sir.

Senator SCHMITT. Gentlemen, thank you very much. We will move to our next panel. We appreciate your coming up together. I think it helped a great deal in the committee's information flow.

Our panel will consist of Mr. Herbert Schulke, vice president and manager of Telecommunications Strategies, Chase Manhattan; Mr.

Floyd Wilkerson, vice president, Information Systems, Eaton Corp. We are sorry that Mr. Berlin of Citibank could not be with us. He has submitted testimony and that will be included in our record.

Mr. Schulke, if you would proceed, welcome.

STATEMENTS OF HERBERT A. SCHULKE, JR., VICE PRESIDENT AND MANAGER, TELECOMMUNICATIONS STRATEGIES, CHASE MANHATTAN BANK; AND FLOYD WILKERSON, VICE PRESIDENT, INFORMATION SYSTEMS, EATON CORP.

Mr. SCHULKE. Thank you, sir. It is a pleasure to be here. As a telecommunication user, you know, we are usually so busy talking on the telephone, we don't get many opportunities to come around and tell our views. After listening to the remarks about providers, I welcome this opportunity as a user to give you those views.

I have a statement which I have submitted for the record and I have a brief synopsis of it I would like to read for you, sir.

Senator SCHMITT. Please do.

Mr. SCHULKE. On behalf of Chase Manhattan Bank, I would like to thank you for the opportunity to present Chase's views on the proposed International Telecommunications Deregulation Act of 1982. This legislation is an important, necessary correlary to, but a separate issue from the legislative effort to deregulate domestic telecommunications. We especially appreciate this opportunity to provide a telecommunication user's viewpoint at the start of the legislative development process. We think that early consideration of user concerns will go a long way in insuring better service at a reasonable cost. Service considerations should be first and foremost and drive our economic policies.

Chase makes extensive use of public telecommunication facilities for voice, data, and telex services. In addition to using the public services, we operate private networks between Chase locations around the world to provide telephone, computer-to-computer communication, and teletype services. We have major switching centers in London, Hong Kong, and New York that are currently connected to 34 countries, and we plan to extend services to over 40 countries in the course of the next year.

Let's now discuss some of the key provisions in the proposed legislation. We fully concur with the provision for the continuing regulation by the FCC of international telecommunications which are not subject to competition. Unlike domestic telecommunications services where congressional authority extends over the entire operating environment, in international telecommunications the United States is only half of any facility or service. Thus, other parties will play a significant role in determining what can and cannot be done. The majority of the world's telecommunications are State-run monopolies, and the concept of competition and deregulation are for the most part nonexistent. Therefore, U.S. attempts to deregulate may at best be viewed with some considerable concern and trepidation by other nations. For this reason, Chase believes the language of the bill should reflect the fact that the United States does not have the freedom to act unilaterally with respect to international telecommunications services. It should emphasize the United States-only aspect of deregulation, and the need to harmonize the regulated international sector with the evolving deregulated United States domestic telecommunication environment.

The stated policy of U.S. reliance on marketplace competition in the private sector to provide international telecommunication services is an essential complement to our domestic rate deregulation. However, speaking as a user of telecommunication services, we consider it essential that this policy statement provide implementation guidance to the FCC that in pursuing the goals of deregulation, it should seek to insure that standards of telecommunications service are maintained or increased, and that prices do not increase unreasonably. Such action could conceivably occur if carriers try to offset in one area the cost of competitive pressures in others. Without appropriate guidance, this could frustrate the competitive objectives of deregulation.

This addition will also give direction to the FCC on how to instruct U.S. representatives to international telecommunications forums on this point, something that is currently lacking. Further, the policy section should be changed to recognize the need to negotiate bilateral and multilateral telecommunication agreements related to the implementation of deregulated international telecommunications services.

One of the most important sections of the proposed bill relates to equitable market access. This policy is probably one of the most controversial and difficult provisions to formulate as well as to execute. Chase fully supports U.S. policy seeking the greatest degree of freedom in the flow of information between nations. Such unrestricted information flows are essential for both business and political reasons. Thus, the enactment of legislation which might be construed as restricting information flow needs to be considered very carefully.

Many of the considerations regarding reciprocity in the international trade arena are equally applicable to this situation. Unfortunately, no forum similiar to GATT in the trade area exists for international telecommunications. There is no question in our mind that the concept of strict bilateral reciprocity implies the threat of reducing the current volumes of world information exchange that occur over international telecommunications facilities. Chase suggests revisions to that section that would provide the following: (A) For expanding the effort of the U.S. Trade Representative in compilation of an inventory of foreign restrictions to the free flow of information through the international telecommunications facilities, along with a program of action to reduce or eliminate such barriers. This would be a suitable activity with the task force that the legislation proposes to coordinate. A similar inventory of U.S. barriers should also be included.

(B) For Presidential authority in consultation with the FCC to negotiate bilateral and multilateral telecommunications agreements that seek to establish greater equity.

(C) For presidential authority, in conjunction with the FCC, to negotiate for improved access to international telecommunications services with the objective of obtaining better service at more reasonable cost.

We think such modifications to section 624 would provide a more workable mechanism to move toward greater equity in access to and utilization of telecommunications services between the United States and other nations without provoking the possible undue restriction of information flows.

Title II of the proposed legislation calls for the establishment of an international telecommunications and information task force whose coordinating functions are similar to those proposed last year by H.R. 1957. While we concurred with the intention of H.R. 1957, we felt that its mechanism was too expensive and tends to take telecommunications out of the mainstream of departmental policymaking. We have come to the conclusion that a more formal method for the development of U.S. telecommunication and information policies at the interdepartmental level, along the lines proposed by S. 2496, is now necessary.

In section 204, Chase would like to recommend an additional requirement for the task force to assemble and maintain an information file related to the telecommunications and information policies of the U.S. Government. This task force would provide a forum for coordinating U.S. policy. With such coordination, we believe the United States would be far more effective in its dealings with the international organizations that regulate the technical and administrative aspects of communication.

We would also like to add our endorsement to the establishment of the Advisory Committee on International Telecommunications and Information. The forum currently provided by the State Department has served a greatly needed purpose. But now there is also a need for a forum in which both users and providers of telecommunications services can meet, make known their sometimes conflicting needs and desires, and have a formal mechanism for injecting these considerations into the governmental process.

Once again we would like to applaud the introduction of this legislation. With the changes we have suggested, Chase feels that the enactment of this legislation could result in improved telecommunications services at a reasonable cost. Recognition of the multilateral nature of international telecommunications services and an explicit interest in negotiations will encourage a climate of progress and improvement in international telecommunications services.

Legislation enacted along this line will serve as a distinct complement to that aimed at deregulating United States domestic telecommunications services. Thank you.

[The statement follows:]

STATEMENT OF HERBERT A. SCHULKE, JR., VICE PRESIDENT, THE CHASE MANHATTAN BANK, N.A.

Mr. Chairman and Members of the Subcommittee: On behalf of the Chase Manhattan Bank, I would like to thank you for the opportunity to present Chase's views on the proposed "International Telecommunications Deregulation Act of 1982." This legislation is an important, necessary corollary to—but a separate issue from—the legislative effort to deregulate domestic telecommunications. We especially appreciate this opportunity to provide a telecommunications user's viewpoint at the start of the legislative development process. We think that early consideration of user concerns will go a long way in insuring better service at a reasonable cost. Service considerations should be first and foremost and drive our economic policies.

Any legislation on international telecommunications should do the following:

It should—

(1) State our national policy goals with respect to international telecommunications services.

(2) Clearly establish the authority of and objectives for the FCC in carrying out these policy goals.

(3) Provide for the protection of United States national security interests.

(4) Create a mechanism within our government to formulate positions on international telecommunications matters that incorporate both the user and provider viewpoints.

Our review of the proposed legislation indicates that it addresses each of these vital needs. In my subsequent remarks I will make some suggestions for improvement.

The Chase Manhattan Corporation is a holding company for the Chase Manhattan Bank, N.A. which has 214 full service branches and one communication terminal branch in New York State. Chase Manhattan Corporation has 15 domestic subsidiaries. Overseas, Chase operates more than 150 entities located in 72 countries. These entities include 98 branches, 24 representative offices and 34 major subsidiary and affiliate groups from which business is conducted in more than 130 countries. With this extensive international presence, overseas telecommunications become a vital part of our business operations. For example, international trade depends on banking services such as international money transfer. Chase handles almost 24,000 international money transfers daily with an average daily dollar value of nearly $90 billion. This whole line of business relies heavily on international telecommunications services.

Chase makes extensive use of public telecommunications facilities for voice, data and telex services. In addition to using public services, we operate private networks between Chase locations around the world to provide specialized telephone, computer-to-computer communication and teletype services. We have major switching locations in London, Hong Kong and New York that are currently connected to 34 countries and we plan to extend services to over 40 countries in the course of the next year.

Our extensive network complex serves to highlight the multinational aspect of our business and just how vital international information flows are. Any actions that might impact or disturb those information flows or their facilitating mechanisms are of interest to Chase. Also, the cost of these services is quite high relative to comparable United States domestic services. We would hope that deregulation of international telecommunications would provide more facilities and a wider variety of service offerings, all at more reasonable prices. Competition among the International Record Carriers and permission for AT&T also to provide data communications as set forth in the bill could be steps toward achieving these goals.

Having established the scope and importance of international telecommunications to Chase, let us now discuss some key provisions of the proposed legislation. We fully concur with the provision for continuing regulation by the FCC of international telecommunications services which are not subject to competition. Unlike domestic telecommunications services where congressional authority extends over the entire operating environment, in international telecommunications, the United States is only half of any facility or service. Thus, other parties will play a significant role in determining what can and cannot be done. The majority of the world's telecommunications are state-run monopolies and the concepts of competition and deregulation are for the most part non-existent. Therefore, United States attempts to deregulate may, at best, be viewed with some considerable concern and trepidation by other nations. For this reason, Chase believes the language of the Bill should reflect the fact that the United States does not have the freedom to act unilaterally with respect to international telecommunications services. It should emphasize the "United States only" aspect of deregulation and the need to harmonize the regulated international sector with the evolving deregulated United States domestic telecommunications environment.

The stated policy of United States reliance on marketplace competition and the private sector to provide international telecommunications services is an essential complement to our domestic deregulation. However, speaking as a user of telecommunications services, we consider it essential that this policy statement provide implementation guidance to the FCC that, in pursuing the goals of "deregulation," it should seek to insure that standards of telecommunications service are maintained or increased and that prices do not increase unreasonably. Such action could conceivably occur if carriers try to offset in one area the cost of competitive pressures in others. Without appropriate guidance, this could frustrate the competitive objectives of deregulation. This addition will also give direction to the FCC on how to instruct United States representatives to international telecommunications forums on this point, something that is currently lacking. Further, the policy section should be changed to recognize the need to negotiate bilateral and multilateral telecommunications agreements related to the implementation of deregulated international telecommunications services.

Section 608(A) of the proposed legislation pertains to the resale or shared use of telecommunications services. This provision will be very disturbing to the national telecommunications authorities of other nations. Recent FCC proposals to this effect, on which Chase commented formally to the FCC, created a significant adverse reaction in the international telecommunications arena. We fully support the thrust of this provision in the legislation but we also feel that modification is necessary. Such modification should reflect the need to develop bilateral or multilateral agreements to effect the implementation of this provision.

We fully recognize that progress will be slow in achieving the desirable results of deregulation by following this approach. The United States must show both patience and persistence in dealing with the national telecommunications authorities of other nations if we are to be successful in gaining acceptance of resale and shared usage of international telecommunications services. But in the absence of this approach, we fear that international services will be disrupted by further denials or delays in the availability of private line services overseas. This could have a major adverse impact on United States businesses, like Chase, that depend upon this type of international telecommunications service.

It is equally important that implementation of resale and shared usage provisions also reflects the need to ensure real competition and does not result in higher prices. Full service carriers such as the International Record Carriers with their resources of highly skilled technical personnel are vital to the provision of reliable international telecommunications services. The economic objectives of "deregulation" should not be allowed to become a disincentive to maintaining quality in services provided. Section 608(A) has provisions for reciprocity restrictions. We will provide some recommendations in this area later in our statement when we address Section 624 related to Equitable Market Access.

Section 610, related to Interconnection, needs the addition of a provision for interconnection with non-regulated services. As currently written, the bill covers only regulated services while at the same time it makes provision for the establishment of unregulated services. The current arrangement for interconnection between the international and domestic areas does not respond in a timely manner to user requirements. This is an area which, in our opinion, has been inadequately addressed by the FCC. The proposed legislation should provide specific guidance to the FCC to address it. The proliferation of service providers increases the urgency of the need for rule making in this area. Direction should be provided to address the service combination of regulated and deregulated international carriers with their domestic counterparts. None of these combinations is covered in this bill, and there is a need for appropriate safeguards, procedures and controls if the user community is to be adequately served.

One of the most important sections of this proposed bill relates to Equitable Market Access. This policy is probably one of the most controversial and difficult provisions to formulate as well as to execute. Chase fully supports United States policy seeking the greatest degree of freedom in the flow of information between nations. Such unrestricted information flows are essential for both business and political reasons. Thus, the enactment of any legislation that might be construed as restricting information flow needs to be considered very carefully. Many of the considerations regarding "reciprocity" in the international trade arena are equally applicable in this situation. Unfortunately, no international forum, similar to GATT in the trade area, exists for international telecommunications. There is no question in our mind that the concept of strict bilateral reciprocity implies the threat of reducing the current volumes of world information exchange that occur over international telecommunications facilities. Chase suggests revisions to this section that would provide the following:

(A) For expanding the effort of the United States Trade Representative in compilation of an inventory of foreign restrictions to the free flow of information through international telecommunications facilities along with a program of action to reduce or eliminate such barriers. This would be a suitable activity for the task force that the legislation proposes to coordinate. A similar inventory of United States barriers should also be included.

(B) For Presidential authority, in consultation with the FCC, to negotiate bilateral and multilateral telecommunications agreements that seek to establish greater equity.

(C) For Presidential authority, in conjunction with the FCC, to negotiate for improved access to international telecommunications services, with the objective of obtaining better services at more reasonable costs.

We think that such modification to Section 624 would provide a more workable mechanism to move toward greater equity in access to and utilization of telecommunications services between the United States and other nations without provoking possible undue restriction of information flows.

Overall, if the modifications we have suggested were incorporated, Title I of the proposed legislation would contain three of the essential policy components we set forth earlier: that is, a clear statement of policy goals; FCC guidance; and protection of national security interests.

Title II of the proposed legislation calls for the establishment of an International Telecommunications and Information Task Force whose coordinating functions are similar to those proposed last year by H.R. 1957. While we concurred with the intention of H.R. 1957, we felt that its mechansim was too expensive and tends to take telecommunications out of the main stream of departmental policy making. We have come to the conclusion that a more formal method for the development of U.S. telecommunications and information policies at the inter-departmental level along the lines proposed by S. 2496 is now necessary.

We are still concerned that information and telecommunication issues should be factored into the decision making process of each executive branch department rather than making them the exclusive purview of one entity. Therefore, we hope that your deliberations will reassure the involved executive departments and independent agencies of their continuing vital roles even while emphasizing the critical need for coordination. We also hope that you will assure yourselves that there are adequate resources in the involved executive department and independent agencies to continue their roles and also contribute staff to the Task Force.

In Section 204, Chase would like to recommend an additional requirement for the Task Force to assemble and maintain an information file related to the telecommunications and information policies of the United States Government. This Task Force would provide a forum for coordinating United States policy. With such coordination, we believe the United States would be far more effective in its dealings with the international organizations that regulate the technical and administrative aspects of telecommunications. United States effectiveness in these agencies is a matter of growing concern. Other nations have introduced recommendations for changes in international telecommunications services that would significantly increase their cost and limit the type of service available to only the type provided in their public network. I think the adverse business impact as well as the potential for restricting information flows are obvious. Chase believes that most international regulatory authorities would welcome strong, active participation by United States representatives, where there is no confusion about who speaks for American policy. One voice is an essential element in exerting United States leadership in the world's telecommunications forums.

The importance of the United States role in international telecommunications regulatory forums cannot be overstated. A large volume of Chase international telecommunications is transmitted between other international parties without ever going throught the United States. These are the forums in which we can influence the conditions under which such services are provided. Guidance to the Task Force to investigate, analyze and recommend actions in this area is an important addition that should be made to this legislative proposal. Great progress could be made in the area of free information flow if the Congress and the Executive Branch effectively address the issues and problems we have mentioned. It could have a very beneficial impact on this nation's ability to promote the transfer of United States telecommunications technology to the lesser developed countries of the world. In addition, it can make a major contribution to creating an environment for international telecommunications that facilitates the flow of information between nations, rather than restricting it.

We would also like to add our endorsement of the establishment of an Advisory Committee on International Telecommunications and Information. The forum currently being provided by the State Department has served a greatly needed purpose. But now there is also a need for a forum in which both users and providers of telecommunications services can meet, make known their sometimes conflicting needs and desires, and have a formal mechanism for injecting these considerations into the governmental process. With these changes, Title II will provide the fourth policy component, mentioned earlier, of creating a mechanism for user inputs into the process of government.

Once again, we would like to applaud the introduction of this legislation. With the changes we have suggested, Chase feels that the enactment of this legislation could result in improved telecommunications services at a reasonable cost. Recognition of the multilateral nature of international telecommunications services and an explicit interest in negotiations will encourage a climate of progress and improvement in international telecommunications services. Legislation enacted along these lines will serve as a distinct complement to that aimed at deregulating United States domestic telecommunications services.

Thank you. I would be delighted to answer your questions.

Senator **SCHMITT**. Thank you.

Mr. **WILKERSON**.

Mr. **WILKERSON**. Thank you, Mr. Chairman. I presented a copy of my complete testimony. What I would like to do now is make comments in an abbreviated form.

Senator **SCHMITT**. Please do.

Mr. **WILKERSON**. In the presented testimony, I indicated that I am responsible for information systems at Eaton Corp., whose headquarters are located in Cleveland, Ohio. I might add that I served in a comparable position at Trans World Airlines for about 10 years, where I had responsibility for worldwide telecommunications and data processing systems.

I appreciate this opportunity to present our views and comments on S. 2469 because issues addressed by this bill are important to Eaton Corp. Eaton is a worldwide manufacturer of advanced technology products serving electronic and electrical, vehicle component and materials handling markets.

We have 170 manufacturing plants and administrative offices located in 25 countries on 6 continents. Of those locations 105 are in the continental United States and 65 are located in foreign countries. We currently employ about 47,000 people. Over 14,000 of those are located in foreign countries.

S. 2469 is an important issue to Eaton because international communications are essential to the effective management and profitability of our company. We currently lease a number of circuits in Europe which are in support of our operations there, connecting our plants to central data processing centers.

We began a project in 1974, to consolidate and improve our data collection and data processing activities in Europe and have now evolved through a communications networking structure to an environment which links our plants in Germany, Italy, France, and Monaco into a corporate data center located in the United Kingdom. This center is linked via a leased transatlantic circuit to our central corporate data center located in Cleveland, Ohio. This permits us to rapidly collect and assimilate financial, operational, and marketing data with which to manage our company on an ongoing basis.

In addition, this information is used in our strategic and marketing planning activities to assist us in anticipating future customer needs and in maintaining our competitive posture in the marketplace.

I cannot overemphasize the importance of this information being accurate, timely, and inclusive. Therefore, we are vitally concerned that we have the ability to freely transfer this information within our organization and that we be allowed to take advantage of technological advances in both telecommunications and data processing so that we can collect, compile, and distribute this information at reasonable cost.

Barriers to the cost-effective use of advanced telecommunications equipment and facilities in the conduct of international trade inhibit the ability of U.S. firms to operate efficiently by reducing our flexibility in network configuration and overall communications planning. This, in turn, delays the implementation and benefits of advanced information systems.

Foreign national policies which inhibit the transfer of technology tend to discourage innovation in the marketplace and counteract efforts to increase productivity and improve customer service.

Senator Goldwater's bill, S. 2469, contains provisions to deal with several of the above concerns. The efforts of the subcommittee to encourage competition in international telecommunications at reasonable charges and to promote foreign commerce are certainly to be commended.

I would now like to comment on specific provisions of S. 2469 which I believe are of particular interest to users of communications services such as Eaton. First, section 608 provides for the resale or shared use of international telecommunications. Eaton believes this is an important consideration for users of international services since it offers an equal opportunity to both large and small corporations to take advantage of modern communication techniques in the effective management of their organizations.

Based on my personal experience, I believe, it will take a long time to gain acceptance of this concept by foreign PTT's because they fear it will reduce the revenue streams they have traditionally enjoyed from their communication facilities monopoly. This revenue has often been used to subsidize other activities of their government.

I further believe that practices followed by certain PTT's have resulted in excessive cost to users as evidenced by the fact that U.S. carriers charge approximately $4,100 per month for their half of private lines from the United States to Europe and Japan, while the European PTT's charge nearly $5,800 and the Japanese KDD approximately $11,000.

It is difficult for me to believe that the cost of providing these services varies that much, and I can only conclude that significant subsidies are flowing to other government services at the expense of the U.S. business community.

It would be of great benefit if S. 2469 could be expanded to cover this issue and call for charges to be reasonable and equitable on both ends of the international circuit.

Second, Section 202 of the International Telecommunications and Information Coordination Act of 1982 provides for the creation of a principal coordinating body. It has long been a complaint of both U.S. and foreign companies that the United States has lacked a single agency or organization with which to deal on matters of international telecommunications policy. There has been no central authority to establish such overall policy, since it has been divided among various agencies, including the Department of State, the National Telecommunications and Information Agency, the FCC, as well as others.

We strongly support this provision to establish a coordinated, clearly defined, and supportive structure within the executive branch to develop and implement goals and strategies which will promote and enhance U.S. technological leadership in the area of telecommunications.

Foreign governments have a single voice in this important area and have used it effectively to accomplish national goals. We have had a continuing problem that has occurred with each new administration regarding the articulation of policy. The resultant problems have been exacerbated due to lack of continuity from one administration to the next, and this has led to confusion of U.S. companies attempting to enter international markets as well as international telecommunications organizations such as the ITU and its principal technical bodies, the International Telegraph and Telephone Consultative Committee, commonly referred to as the CCITT, and the International Radio Consultative Committee, referred to as the CCIR.

I am concerned about expiration of the task force in 6 years, since it appears that the principal coordinating body then would become the Federal Communications Commission. I believe the existence of the task force is essential to the long-term realization of the goals spelled out in section 601, and some provision should be made for its continuation beyond the period indicated.

Third, and finally, sections 614 and 623 give the Federal Communications Commission authority to vacate or modify contracts related to international telecommunications services and to deny certification of any customer-premises equipment of which more than half of the value added was manufactured in a country which does not extend equitable market access to U.S. telecommunications equipment manufacturers.

Both sections appear to promote the concept of reciprocity with the obvious objective of reducing trade and investment barrriers. While this, too, is a worthy goal, my concern is that the Commission could apply this authority in an inappropriate manner and create greater problems than those it is attempting to resolve.

I have noted the protective provisions in sections 605(b) and 624(b) which require the Commission to take into consideration the needs of sovereign nations and the need to coordinate with the international task force. It is not clear to me, however, that the requirement to consult with the task force also applies to sections 614 and 623. Therefore, I am concerned that there may not be adequate supervision and control over the use of this power by the Commission.

The exercise of the authority given under sections 614 and 623, without adequate supervision, could potentially result in a strict application of reciprocity and worsen rather than improve U.S. economic vitality.

The concept of substantially equivalent opportunities I believe offers potential for a more positive approach and allows for flexibility in the lowering of various trade barriers.

On this issue of reciprocity, I believe the committee would find it useful to review the position formulated by the Business Roundtable as presented in the statement on reciprocity, dated March 19, 1982. Although that document addresses specifically international trade and investment, it seems to me that the philosophy presented applies fully to the issues with which this committee is wrestling.

In summary, I am greatly encouraged by the principal provisions of this bill in that they provide for share and resale of communications services, for a central authority to establish coordinated U.S. policies for international telecommunications, and do provide basic supervision of actions taken by the principal regulatory group, the Federal Communications Commission.

I believe that consideration should be given to the necessity for reasonable and equitable charges on both ends of international circuits. The emphasis on the importance of international trade, as exemplified by designating the Secretary of Commerce as chairman of the task force and the inclusion of the U.S. Trade Representative as a member of the task force, is certainly a positive step which I believe will encourage and enhance our position in international commerce in the important area of telecommunications services.

That concludes my remarks. I would be happy to entertain any questions you may have.

[The statement follows:]

STATEMENT OF FLOYD M. WILKERSON, VICE PRESIDENT, INFORMATION SYSTEMS, EATON CORP.

Mr. Chairman, Members of the Subcommittee, my name is Floyd Wilkerson and I an Vice President-Information Systems for Eaton Corporation, whose headquarters are located in Cleveland, Ohio. I appreciate this opportunity to present my views and comments on S. 2469, the International Telecommunications Deregulation Act of 1982.

Eaton Corporation is a worldwide manufacturer of advanced technology products serving electronic and electrical, vehicle component and materials handling markets. We have 170 manufacturing plants and administrative centers in more than twenty five countries on six continents. One hundred and five of those locations are in the continental United States and 65 are in foreign countries. We currently provide employment for approximately 47,000 people, over 14,000 of which are located in foreign countries. These employees produce goods and services that have brought company sales to more than $3 billion in each of the last three years.

S. 2469 is an important issue because international telecommunications is essential to the effective management and profitability of our company. We currently lease a number of circuits in Europe which are in support of our operations there, connecting our plants to central data processing centers.

We began a project in late 1974 to consolidate and improve our data collection and data processing activities in Europe and have now evolved, through a communications networking structure, to an environment which links our plants in Germany, Italy, France and Monaco into a corporate data center located in the United Kingdom. This center is linked, via a leased transatlantic circuit, to our central corporate data center located in Cleveland, Ohio. This permits us to rapidly collect and assimilate financial, operational and marketing data with which to manage our company on an on-going basis. In addition, this information is used in our strategic and market planning activities to assist us in anticipating future customer needs and in maintaining our competitive posture in the marketplace. I cannot over emphasize the importance of this information being accurate, timely and inclusive. Therefore, we are vitally concerned that we have the ability to freely transfer this information within our organization and that we be allowed to take advantage of technological advances in both telecommunications and data processing so that we can collect, compile and distribute this information at reasonable cost.

I am personally concerned about the growing trend of national telecommunications policies which no doubt represent a genuine concern of nations to protect the privacy of their citizens and to assure their national security. However, this trend in policy direction can oftentimes involve decisions aimed at protecting and nourishing indigenous industries in the area of communications, data processing and electronics. It is in this area that companies like Eaton are concerned that an unfair competitive advantage may evolve by denying international firms access to adequate information networks. The foreign PTTs seem to have great concern that multinational corporations will implement and operate large private networks using advanced telecommunications equipment to assure high reliability, data integrity and minimize the cost of communications facilities.

More important, in my opinion, are the advanced computer based applications which these networks support and which have played an important role in U.S. economic leadership and in our ability to effectively manage far-flung enterprises. Certification and approved procedures serve as barriers to the effective use of communications facilities. They inhibit the ability of U.S. firms to operate efficiently by reducing flexibility in network configuration and overall communications planning. They delay the implementation and increase the cost of advanced data processing applications. Other barriers are the restrictions on shared use and resale of communications facilities, and, in many countries, the imposition of a surcharge for data communications.

S. 2469 indicates that one of its goals is "promoting the free flow of information." While it does not deal with specific guidelines to facilitate the free flow of information across international borders, it does contain provisions which will encourage such a movement, and thereby, makes a positive statement on behalf of the United States that a deregulated, unencumbered environment for international communications is an important and fundamental aspect of today's international marketplace. Consequently, to this end, it has my full support.

In the context of the current worldwide recession, our efforts to multiply the productivity of our resources have increased in intensity and I strongly believe that the adoption and proper application of advanced technology will be one of the principal means of achieving that goal. National policies and legislation which inhibits the transfer of technology and which discourages innovation in the marketplace tends to counteract those efforts and raise questions about the efficacy of future investments in research and development at our foreign locations.

American technology is the foundation upon which we have built world leadership in the marketplace. Therefore, we cannot simply accept actions by other nations which may adversely affect our ability to compete overses. We must counter the adverse consequences of actions in positive ways. Failure to do so will diminish growth in the important communications and information industries within the U.S. economy worldwide and can only lead to poorer service and higher cost for international communications. Policies which force U.S. firms to use only those services provided by the national Postal/Telegraph Administrations (i.e., PTTs. KDD, etc.) gives foreign administrations virtual control over the type of services that will be provided as well as the resulting cost to users. The affect of this kind of situation is that innovation can be stymied and a growing trend toward nationalism and protectionism in the area can develop.

There can be no question that a worldwide battle is in progress in the communications and information industries, and that many restrictions on U.S. based organizations by foreign administrations have been imposed to facilitate the growth and competitive position of their own indigenous industries. The principal provisions of this bill should assist in maintaining U.S. leadership in this important growth area and encourage, rather than discourage, innovative use of technology offered in the world marketplace.

I would now like to comment on certain specific provisions of the bill which I believe are of particular interest to user of communications services such as Eaton.

Section 608 provides for the resale or shared use of international telecommunications service, an activity which is currently prohibited or restricted in international communications facilities and which was only recently approved within the United States. Eaton believes this is an important consideration for users of international services since it offers an equal opportunity to both large and small corporations to take advantage of modern communications techniques in the effective management of their organiation. Based on my personal experience, I believe it will take a long time to gain acceptance of this concept by foreign PITTs because they often fear it will reduce the revenue streams they have traditionally enjoyed from their communications facilities monopoly. This revenue has often been used to subsidize other activities of their government. I further believe that practices followed by certain PITTs have resulted in excessive costs to users, as evidenced by the fact that U.S. carriers charge approximately $4,100 per month for their half of private lines from the U.S. to Europe and Japan, while the European PTT charges nearly $5,800 and the Japanese KDD approximately $11,000. It is difficult for me to believe that the cost of providing these services varies that much and I can only conclude that significant subsidies are flowing to other government services at the expense of the U.S. business community. It would be of great benefit if S. 2469 could be expanded to cover this issue and call for charges to be reasonable and equitable on both ends of the international circuit.

Section 202 of the "International Telecommunications and Information Coordination Act of 1982" provides for the creation of a principal coordinating body for the development of United States telecommunications policy, particularly in the area of international telecommunications. It has long been a complaint of both U.S. and foreign companies that the United States has lacked a single agency or organization with which to deal on matters of international telecommunications policy. There has been no central authority to establish such overall policy since it has been divided among various agencies, including the Department of State, the National Telecommunications and Information Agency, the Federal Communications Commission, as well as other agencies. We strongly support this provision to establish a coordinated, clearly defined and supportive structure within the Executive Branch to develop, promote and implement goals and strategies which will promote, maintain and enhance U.S. technological leadership in the area of telecommunications. Foreign governments have a single voice in this important area and have used it effectively to accomplish national goals. We have had a continuing problem that has occurred with each new Administration regarding the articulation of policy. The resultant problems have been exacerbated due to lack of continuity from one administration to the next, and this had led to confusion of U.S. companies attempting to enter international markets, as well as international communications organizations such as the International Telecommunications Union (ITU), and its pricipal technical bodies, the International Telegraph and Telephone Consultative Committee (CCITT) and the International Radio Consultative Committee (CCIR), which deal with telephone/telegraph issues and radio issues respectively. I am somewhat concerned about expiration of the Task Force in six years, since it appears that the principal coordinating body would then become the Federal Communications Commission. I believe the existence of the Task Force is essential to the long-term realization of the goals spelled out in Section 601 and some provision should be made for its continuation beyond the period indicated.

Sections 614 and 623, "Copies of Contracts to be Filed" and "Customer Premises Equipment", give the Federal Communications Commission authority to vacate or modify contracts related to international communications services, and to deny certification of any customer-premises equipment of which more than half of the value added was manufactured in a country which does not extend equitable market access to United States telecommunications equipment manufacturers, respectively.

Both sections appear to promote the concept of reciprocity within the obvious objective of reducing trade and investment barriers. While this, too is a worthy goal, my concern is that the commission could apply this authority in an inappropriate manner and create greater problems than those it is attempting to resolve. I note that Section 605(b) recognizes that international telecommunications are joint undertakings between United States persons and representatives of various sovereign nations and that the interest of those sovereign nations are to be considered in the implementation of U.S. policy. I also note that Section 624(b), "Equitable Market Access," requires the Commission to consult and coordinate with the International Task Force on Telecommunications and Information to assess the probable impact of any proposed exercise of powers provided under that subsection. It is not clear to me that the requirement to consult with the Task Force also applies to Sections 614 and 623 mentioned above. Therefore, I am concerned that there may not be adequate supervision and control over the use of this power by the Commission. The exercise of the authority given under Sections 614 and 623, without adequate supervision, could potentially result in a strict application of reciprocity and worsen, rather than improve, U.S. economic vitality. The concept of "substantially equivalent opportunities" offers potential for a more positive approach and allows for flexibility in the lowering of various trade barriers. On this issue of reciprocity, I believe the committee would find it useful to review the position formulated by the Business Roundtable (BRT) as presented in its statement on reciprocity, dated March 19, 1982. Although addressed specifically to international trade and investment, it seems to me that the philosophy presented in that document applies fully to the issues with which this committee is wrest[illegible].

In summary, I am greatly encouraged [illegible] he principal provisions of this bill in that they provide for share and resale of communications services, provide for a central authority to establish coordinated U.S. policies for international telecommunications, and include basic provisions for supervision of actions taken by the principal regulatory group, the Federal Communications Commission. I believe that consideration should be given to the necessity for reasonable and equitable charges on both ends of international circuits. The emphais on the importance of international trade, as exemplified by designating the Secretary of Commerce as Chairman of the Task Force and the inclusion of the United States Trade Representative as a member of the Task Force, is a positive step which I believe will help encourage, maintain, and enhance our position in international commerce in telecommunications services.

That concludes my remarks. I will be happy to entertain any questions you have.

Senator **Schmitt**. Gentlemen, the infrastructure seems to be expanding. We have an assistant secretary for commerce that people believe ought to be beefed up and capable of operating in this field. We have had a recommendation that there be an assistant secretary of state for telecommunications with similar capabilities. The International Trade Representative's office has been brought into the discussion. There is a proposal for a central coordinating council or a task force.

Are we not getting top-heavy again, Mr. Wilkerson?

Mr. **Wilkerson**. I listened to the prior conversation with a great deal of interest. I am certainly not an expert in the organization of Government affairs, but just listening as a user it was interesting to see the two issues being debated.

On the one hand, the lack of continuity and concern about how you create continuity and what sort of an infrastructure needs to be there to provide that; and yet on the other hand the concern that, well, if we keep adding all these positions—and they are, I believe, appointed positions, is that correct, even the ones we are talking about adding?

Senator **Schmitt**. Most of them would be appointed, political appointments.

Mr. **Wilkerson**. Political appointments. So continuity still seems to be a problem. Certainly, creating a position provides resources. Whether or not it provides continuity is a question in my mind.

Senator **Schmitt**. We could turn it over to the Federal Reserve Board.

Mr. **Wilkerson**. I suppose naming the FCC, that is presenting them as the principal coordinating body certainly gives greater continuity because it is an independent regulatory——

Senator **Schmitt**. But let us face it, the FCC is totally saturated. Every time they turn around, there is a new technology that they have to deal with. And frankly, I am not sure that over the long haul the Commission mechanism is going to work for just the things that they are supposed to deal with, not to mention the international. And we will continue to look at that, I am sure.

Mr. Schulke, do you have any comment?

Mr. **Schulke**. Yes. As you probably know, I have over 35 years of experience in this area, and if there is one thing I have learned in that 35 years it is the importance of telecommunications in every type of organization imaginable. For that reason, I think what you are seeing in these recommendations is the need for all organizations to take their telecommunications and establish some organizational entity to control and manage their usage of that.

Now, in that process, I think it is going to be inevitable that the compounding of the proposals has got you to the point of being close to overloaded. I think I would have to look to the legislative process now to take a hard look at the variety of proposals and try to harmonize the needs for each individual organization, such as the proposal for State to have an assistant secretary for telecommunications. You can say the same thing for Defense. Commerce has a role in telecommunications. Each and every one of them does.

But what I think I see as a user is a need to take and coordinate all agencies of the Government in some centralized and effective manner. They all have a role. They all have an interest. But they all have to have some central body to coordinate their aims. And the proposal of the task force in this legislation is a method of doing that. I suspect the development process for the legislation will produce suggestions and amendments which will improve on that.

Senator SCHMITT. If I remember correctly, the Founding Fathers decided that there were five major areas of national interest that required Cabinet-level attention. Is that correct? Five? I believe it was five.

I have never been convinced that any of the Cabinets we have created since then have really had anything more than a basic political motivation behind them depending on when they were established. At least we are beginning to work on getting rid of a couple of them that were established since I came to the Congress, and I hope that we are successful in doing that. I do not think that public policy will be significantly damaged by so doing.

But is telecommunications such a new and novel and unanticipated revolution that we ought to seriously consider that it has an impact on national activity that would require a secretary of telecommunications? You just listed every department has an interest, and it is dominating our economy now. It is the most significant single factor in our gross national product.

Directly or indirectly, it is certainly the most significant single factor in our ability to keep the peace in this world and to move out and utilize and explore the new ocean of space. It is here. And certainly, except for maybe Mr. Jefferson, I doubt if anybody anticipated it 200 years ago.

Mr. SCHULKE. I think if you measure it in terms of expense, telecommunications did not need any singling out when it was minor expense. Today it is a major item of expense. But I think even more importantly, the degree of information flow among the Nations of the world and among us as a people, as a nation, in our business, in every facet of our life depends upon premium telecommunications. Our whole style of management in the United States and our economy is dependent upon a premium telecommunications network, which we have enjoyed to date and I think is one of our biggest competitive edges in the world. And I do not want to see anything happen to upset it. So it does need attention.

In the course of government today, I think all you have to do is look at the appropriations and see the expenses we now incur to move information, whether it is at long distances or short distances—and that is all telecommunications is is an information movement problem.

Senator SCHMITT. But every time we turn around the proposals that we get to improve the current coordinating system tend to proliferate coordination rather than centralize it. We are just going through this discussion again today.

Mr. Wilkerson, do you think that maybe we have to take an even bolder step?

Mr. WILKERSON. Well, it is conceivable. Many people have made the statement that in today's world information is power. And we have seen the nations of the world become acutely aware of that. The less-developed countries have become extremely concerned about what they believe is a natural resource, that is the space above their country that would support satellites to provide them with modern communications, and feel it should be reserved for them, and that others should not be allowed to have access to that space.

Everyone has focused on the issue and the importance of information or knowledge. I think we have to distinguish between the technical systems that support telecommunications as opposed to the very substantial issues that relate to individual countries regarding the flow of information and the use of that information. The ability to control information does have enormous power.

Senator SCHMITT. There is no question about that.

Gentlemen, we have heard a great deal of comment and testimony about the effect of lifting the international resale and shared used restrictions from the abolition of lease lines to a system of usage-sensitive pricing.

No one has pointed out an actual retaliatory effort along these lines. The fears are real, but do you think they are reasonable, Mr. Wilkerson?

Mr. WILKERSON. Let me be sure I understand the question. You are saying no one has pointed out an instance where a foreign administration has taken retaliatory action against companies who have instituted their own private communications networks?

Senator SCHMITT. Are you aware of such actions?

Mr. WILKERSON. Yes, based on my experience with the airline. The airlines have an extensive worldwide communications network that they use to communicate between themselves.

Domestically, that interline network is supported by an airline-owned organization called Aeronautical Radio, Inc. [AIRINC]. Internationally it is supported by an organizationl called SITA, with headquarters in Paris, and it provides worldwide communications throughout Europe, the Middle and the Far East.

And while I served on the boards on one of those organizations and directed the efforts of individuals who served on the board of the other, I saw many efforts on the part of the foreign administrations to prevent those networks from continuing to grow and from continuing to take advantage of advanced technology which enabled us to lease lines and expand the use of those circuits significantly.

They did that by applying different rate structures, depending on what we were doing with the circuit, from an 0.8 rate to a 1.2 and a 1.3 in some countries. I saw them refuse to let us expand that network and technology into other areas because of the desire to create their own national network.

Many of them have now, in fact, installed and are offering a public-switched packet network which they want everyone to use and they want to stop the proliferation of private networks.

The network installed by the banking industry, called SWIFT, met enormous opposition as it began to grow, and as those individual administrations wished to have that traffic diverted to their national networks.

For that reason they started talking about volume-sensitive tariffs, so we could no longer lease a circuit at a fixed price and then employ technology to expand its use either through high-data transfer rates or through equipment called concentrators and multiplexors which enabled us to effectively get many channels out of a single leased circuit. They said, OK, if you are going to do that, we are going to charge you on a volume-sensitive rate.

We believe, and I still personally believe, that their strategy was to try to force large private users back into the public switch network, and I think that that same strategy is going on today, although they have somewhat softened. They haven't pursued it as aggressively as they did 3 or 4 years ago, but it still exists today. And I don't see that changing. That will probably grow.

Senator Schmitt. Do you see any way to offset that?

Mr. Wilkerson. Well, I think the provisions of this bill will——

Senator Schmitt. Reciprocity incentives——

Mr. Wilkerson. The reciprocity incentives, properly applied, as I mentioned in my testimony. Just the fact that the bill has been written and has been presented in itself will have an enormous bearing on the representatives of those administrations who meet privately in an organization called CEPT, which I am sure you are familiar with, where representatives from each of the foreign PTT's get together and essentially plan their strategy, including the rates they will charge.

Senator Schmitt. Do you think somebody has told them about the bill?

Mr. Wilkerson. Absolutely. I don't think there is any question about it.

Senator Schmitt. Mr. Schulke, do you have any comment on this?

Mr. Schulke. I can only second what Mr. Wilkerson pointed out, especially the example with respect to SWIFT.

My own observations have been in the international forums and symposia that I have attended. I listened to discussions by national telecommunication authorities with respect to such networks and the institution of volume-sensitive pricing, which is almost counterproductive to the free flow of information. One of the things we fostered is an environment to increase the flow, and that will do just the opposite, to restrict. And I think those concerns are very real.

Senator Schmitt. Some people have told us that because services are provided in tandem with foreign entities, monopolistic entities, deregulation and competition in international services are not possible. Do you agree with that, or do you have any reason to comment, since you are just users? Mr. Schulke?

Mr. Schulke. I think it is possible. As I pointed out in my statement, the methodology is going to require a great deal of bilateral and multilateral negotiation and agreement, because it takes two parties to create every one of those international facilities. They vary in level of sophistication, in variety of economic objectives, and in fact economic position in the world.

But I do think progress can be made by pursuing those lines and by creating a U.S. image that is not trying to ram some U.S. theory down a foreign government's throat, but rather seeking a cooperative venture to enhance the flow of information on a mutually beneficial basis.

Senator SCHMITT. Mr. Wilkerson?

Mr. WILKERSON. I am aware that some people have suggested that the practice of communications facilities being a joint venture between U.S. parties and representatives and foreign governments, or in some cases private individuals and foreign countries who enter into a joint agreement be changed; that instead of half a facility, whether it be a cable or a satellite or whatever, being owned by the foreign entity and half by the United States, that they own alternative facilities. For example, facility one belongs to the U.S. party and they have total control over the rates charged on both ends of that facility. Facility two is owned by the foreign facility and they have total control over the rates charged on both ends. The theory being that with provisions of a bill like S. 2469, the U.S. carrier then would employ reasonable rates at both ends and that would force the foreign group to do the same thing.

I personally don't think that would be an effective strategy. I don't think they would ever sign such an agreement to begin with. I think the secret to it is to sit down and simply negotiate an understanding as to how those facilities will be provided and how they may be used, by both international record carriers and private users such as ourselves.

Senator SCHMITT. Should the President, through the International Trade Representative, have sole authority for such negotiations?

Mr. WILKERSON. I am not an expert in that area. It is my understanding that the President is responsible for such negotiations and generally acts through Commerce and the U.S. Trade Representative and State who decides how those negotiations will be conducted and how they will be held. Again, that is my perception and I am probably as confused as many other people.

Senator SCHMITT. I will tell you, the more I have heard this story, and I have been at it now for 5½ years in the political arena and a few more years prior to that in trying to use these communications, the more discouraged I get about the ability of the existing infrastructure, however we modify it, to handle the complexity of the problem.

And I am only half musing when I say maybe there is a need for a secretary of information that combines all of these functions into one point, that then has direct, one-tier access to the President of the United States.

As it stands right now, it is all at too low a level. There is no question that the discussion is at too low a level. It is totally uncoordinated. Each secretary that has some responsibility has other responsibilities that they consider far more urgent on a day-to-day basis.

So if we continue the way we have been going, even with the modifications, well-intentioned modifications that we proposed in the legislation before us and that others have proposed, I suspect we will continue to be back here 6 years from now with the same kind of discussion.

It may take a fundamental generic change in the infrastructure of Government, because it is something different. Almost everything else that this Government does, with the exception of the managerial regulation of our system of commerce, has very strong roots in what was going on 200 years ago, but not telecommunications. Never could have been anticipated, except by—at least I don't know of it being anticipated.

Mr. **Wilkerson**. I certainly agree with that. I don't believe the forefathers ever anticipated the degree of sophistication of today's that communications. The instantaneous, worldwide availability of events and information are totally beyond the dreams of anyone.

Senator **Schmitt**. Christmas, 1968. Hundreds of millions of people for the first time in human history, through the revolution in communications taking place at that time, had new thoughts about the Moon, simultaneously, when Frank Borman and his crew were circling the Moon. That is probably the key date on which it was finally demonstrated just what was happening.

Unfortunately, about every country in the world but the United States recognized it. In one way or the other, directly or indirectly, unconsciously or consciously, they recognized what the change was. And from a policy point of view, we have yet to come to that conclusion.

Thank you, gentlemen. The hearing is recessed.

[Whereupon, at 11:55 a.m., the subcommittee was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF EDUARD B. BERLIN, VICE PRESIDENT, CITIBANK, N.A.

Citibank appreciates the opportunity to provide its views on S. 2469. We commend the Subcommittee and its staff for their continued efforts to rationalize government policy in international telecommunications. They address issues that are fundamental to international commerce generally, but to the international banking community in particular.

Citibank provides numerous financial services on a global basis to customers located in over 90 countries—everything from stand-by letters of credit for corporations to refunds for lost travelers checks for families on vacation. To do this economically, like many other multinational companies, we have developed a private communications network for voice and data that spans 70 countries and links our branches and principal places of business. This intracorporate network is our primary means of moving essential data to and from our branches. It provides timely credit analysis and economic reporting, and supports a whole host of treasury and money market functions. It also permits the decentralization of management decision-making, affording our managers the best data available with which to make decisions anywhere throughout our branch network.

On a global basis, many corporations are providing terminal-to-computer services. Private financial networks, for example, are now being used to provide customers with a wide range of global transactional services such as cash management and balance reporting, trade services and credit authorization at merchant locations. The key components of the Citibank financial network are private lines linking our main switching centers in Hong Kong, London, Bahrain, and New York. Our ability to interconnect these leased lines with various computers, terminals and public data networks and obtain direct access to multiple data bases throughout the world is critical. The costs are significant, but the cost of not having such a network is devastating.

In light of this dependence, I would like to outline a few areas of concern affecting the ability of users of international communications services to conduct business overseas.

(1) Rates for international communications services provided by United States carriers are higher than those charged for like services made available by domestic carriers. We believe this is true because markets are uncompetitive. In addition, overseas prices are kept high by an arbitrary distinction between domestic and international services.

(2) The fundamental building block of the private internatinal network is the private line. Users are greatly concerned that essential services, such as flat-rate leased lines, or interconnection between public and private networks will be withdrawn from the market in a number of key countries, forcing users to migrate to volume sensitive public networks.

(3) Users are denied the full benefits of satellite technology. Citibank, and other users, have found in domestic operations that satellites offer substantial service benefits. Because of present market structure and pricing schemes in the international sphere, and limitations on direct access, we are unable to take full advantage of this technology. For example, we are unable to use our own earth stations for access to international satellite circuits.

(4) United States policy initiatives have stressed issues associated with services provided by those firms known in legal parlance as "common carriers." Information services such as time-sharing, cash management, on-line data base access, funds transfer and electronic publishing do not fit into the common carrier category, and as a result, are largely ignored. Foreign telecommunications administrations do not draw the field so narrowly. PTTs have entered, or are planning to enter, the broader information service field. As they do so, we may see increasing restrictions on the competitive opportunities available for information-based service providers. The

U.S. policy, in our view, emphasizes protection of carrier perogatives. Protecting the development and acceptance of information services is only a secondary concern. Given the strategic and economic importance of non-carrier services to the U.S. economy, this policy should be reassessed.

Having outlined these broad concerns, I would like to discuss some specific points raised by S. 2469.

First, Citibank supports the Bill's intention to enhance competition in international telecommunications. S. 2469 creates a mechanism for lowering barriers to market entry and reducing regulatory burdens. The existing marketplace is not competitive, however, and while we support adoption of principles which would permit the FCC eventually to deregulate the field, we believe that immediate deregulation will neither result in cost-based rates nor induce carriers to offer new services and provide better support for existing services. In addition, the principal barrier to open competition is to be found not in our own regulatory framework, but in those abroad. The provision of international telecommunications services involves a partnership and as long as the foreign partner embraces monopoly, true competition, even at the United States end, is impossible.

The creation of a truly competitive international marketplace involves highly sensitive matters of economic and social philosophy and, ultimately, sovereignty. These issues appear more integral to our national commercial and foreign policy than our telecommunications policy. With this in mind, Citibank supports the creation of a unified policy development mechanism such as the task force on international telecommunications and information proposed in this legislation.

We would like, however, to point out that over the last year the government has lost a number of valuable experts due, in our view, to a lack of commitment to the development of such coordinated policies. While we applaud Congress' concern about the future of U.S. policy, we are troubled by the present lack of resources dedicated to this activity. Immediate action is called for to stem the appalling attrition rate until Congress has had time to enact a bill of this nature.

One vehicle countenanced by the Bill to increase competition is encouraging resale and shared use. Certainly users would benefit if competition could be increased, with the blessing of PTTs, through open resale. However, the position of PTTs on resale is clear. It is viewed as a competitive threat and is prohibited by international agreement. In this environment, unilateral implementation of resale would result in a loss of essential underlying facilities such as private lines—a circumstance extremely detrimental to users.

In view of the adverse international reaction to the FCC's 1979 resale decision, we would urge you, and other policy-makers, to rethink your position on resale, which does not translate well overseas.

The U.S. strategy should be to seek agreement on limiting the scope of PTT monopoly and carrier telecommunications activities and thereby narrow the scope of what would constitute unauthorized resale. Banks, processing companies and publishers do not wish to resell transmission services. They need access to underlying facilities to provide non-carrier services. Conversely, one cannot imagine that our trading partners will permit their PTTs to preempt non-carriers from entering their markets. The language in the Bill glosses over this very critical distinction. Again, we see that the fundamental problem in this marketplace is the economic philosophy applied by foreign administrations to telecommunications. We believe that a broader U.S. strategy is required, designed to reach agreement on limiting the scope of the PTT monopoly. Unilateral imposition of resale may be viewed as provocative and will hurt rather than help the consumer.

S. 2469 clarifies Comsat's authority to provide service to users directly as well as to common carriers, and resolves an issue with which the FCC has been grappling unsuccessfully for years. While the FCC has permitted Comsat to serve television customers directly, direct access for all users has been denied. At the present time, users acquire satellite facilities only through middlemen, that include AT&T and the IRCs. This results in a substantial—and unjustifiable—mark-up. Moreover, because these middlemen control both submarine cable and satellite alternatives, charging an averaged rate for both, the user cannot base facility choices on cost. Congress is presently able to determine that Comsat should offer service-based satellite services to users as a means of providing direct competition within the international market. Comsat has already expanded into direct broadcasting, domestic satellite ventures and equipment markets—Congress should direct expansion where the public interest will best be served. Unbundled satellite services offered by a separate Comsat affiliate would not endanger Comsat's participation in Intelsat, but would benefit users by providing them both a choice of service and the right to pay only for services that they need.

S. 2469 would authorize the FCC to encourage open markets for telecommunications goods and services through the negotiation of reciprocal barriers to market entry and operation. In our view, this approach is not appropriate at this time. Our trade policy is based on a philosophy of liberalization. Retaliatory actions as anticipated by S. 2469 would undoubtedly result in the proliferation of protectionist policies to which users of international telecommunications would be held hostage. Furthermore, we do not believe that telecommunications should be exempted from our overall trading policies. Neither should sectoral reciprocity as set forth in S. 2469 be used as the basis for U.S. trade policy.

In addition, in our view, an increase in the availability and use worldwide of information services will result in a significant increase in the demand for telecommunications facilities. Near term United States policy, therefore, should be limited to the relative benefits of open markets generally, while leaving the specific issue of expanding the carrier market for future discussions.

I hope these comments have been useful. Thank you again for providing us the opportunity to share our views. I will be happy to answer any questions you may have.

STATEMENT OF ASHER H. ENDE

I. PERSONAL BACKGROUND

My name is Asher H. Ende. I am presently Counsel to the firm of Fly, Shuebruk, Gaguine, Boros, Schulkind and Braun, 1211 Connecticut Avenue, N.W., Washington, D.C. 20036. My legal work is primarily in the common carrier field. I also provide consulting services to both domestic and foreign clients which are either engaged in providing communications services or are entities with interests in such services.

I am not presenting this statement on behalf of any client. I have not submitted this statement to or discussed it with any client. Instead, the comments and recommendations I am making reflect my personal views. The observations set forth below on this bill are based on the above-described comprehensive experience in the field of international communications.

DEVELOPMENT OF REGULATORY POLICY

Regulatory policy with respect to international telecommunications had its start with the enactment of the Federal Radio Act in 1927. This bill was designed primarily to provide a logical and rational basis for the assignment and allocation of radio frequencies. It was initiated because of interference which was being experienced as a result of the development of radio broadcasting and the demands for facilities which far exceeded the then available spectrum.

In addition to being useful for radio broadcasting, the spectrum was also being used in the late 1920's to provide a means for international record communications. Accordingly, the Federal Radio Commission created by the Federal Radio Act of 1927 was required to turn its attention to the policies to be followed in assigning that part of the spectrum useful for long-distance or overseas record communications. At that point, this part of the spectrum was being used not only by the then existing international radio carriers such as RCA Communications, but also by various other interests who needed the ability to communicate to overseas points or ships at sea.

The Federal Radio Commission recognized very quickly that at the then state of the art there were not a sufficient number of frequencies available to fulfill all of the requirements, particularly for private use. It therefore decided that that part of the spectrum would be assigned only to entities which wished to become common carriers and provide services between their points of operation to all persons wishing to use them pursuant to tariffs which were then required by amendments to the Interstate Commerce Act.

In accordance with this ruling of the Federal Radio Commission, various entities which had been using the long range spectrum for their private needs created separate common carriers which would not only carry their own traffic, but also the traffic of the public to the points they served. Thus, in addition to RCA Communications and the Mackay Companies, United Fruit established a subsidiary, "Tropical Radio," which provided services to ships at sea and to points in Central and South America in which United Fruit operated plantations. Global Wireless was created by the Dollar Lines to provide services to its ships and to various points in the Pacific Basin where the Dollar Lines had interests. Firestone, a company which had plantations in Liberia, created U.S. Liberia Radio Company to provide services between its headquarters in Ohio and Liberia.

The various newpapers in the United States which desired to use the radio spectrum for the transmission of news from numerous communications points in the world to this country organized Press Wireless, a jointly-owned carrier which was to devote itself to the transmission of news and other information relevant to the operation of newspapers, also as a common carrier.

At the time the Federal Radio Act of 1927 was passed, the Congress was also concerned about the possible development of monopolies in the manufacture and sale of electric and electronic equipment useful in broadcasting and common carrier communications. It therefore included a separate section, Section 15, in the Federal Radio Act of 1927 which specifically made the antitrust laws of the United States applicable to the manufacture and sale of and the trade in radio apparatus affecting interstate or foreign commerce, as well as interstate and foreign radio communications.

In addition, the Congress was also concerned that the older and well entrenched cable interests might acquire and arrest the development of the newer radio record carriers. It therefore included another provision in that law (Section 17) which among other things effectively prohibited any cable carrier from acquiring any radio carrier providing international radio services if the purpose or effect thereof would be to substantially lessen competition, restrain commerce or unlawfully create a monoploy.

The Communications Act of 1934 carried forward both of the above-described Sections 15 and 17 as Sections 313 and 314 of the Communications Act. In addition, Section 11 of the Clayton Act was amended by Section 602(d) of the Communications Act to give the Federal Communications Commission authority to enforce Section 2, 3, 7 and 8 of the Clayton Act insofar as that Act was applicable to common carriers engaged in wire or radio communications or radio transmission of energy.

The Communications Act as originally passed did not specifically address either competion or merger in international Communications. Instead, it included a standard in Section 214 which prohibits the construction of a new line or the extension of an existing line or the acquisition of any line or extension unless the Commission ceritifed that the present or future public convenience and necessity require or will require construction or operation of such additional or extended lines In other words, freedom of competition was subjected to the licensing power of the Commission and limited to those who could demonstrate that they met the qualifications for the issuance of a certificate of public convenience and necessity.

DEVELOPMENT OF FCC POLICY WITH RESPECT TO INTERNATIONAL COMMUNICATIONS

Before the policy originally developed by the FCC in authorizing competitive facilities in the international field can be appreciated and fully understood, it is necessary to remember and recall the basic economic situation in the United States at that time. The Communications Act of 1934 was passed while this country was still suffering from the "Great Depression." Numerous communications companies had gone through bankruptcy or other reorganization. The basic concern at that time, therefore, was the maintenance of viable entities.

Since in the communications field a basic and substantial investment in facilities made it possible for a a company to handle a substantial volume of traffic without further cost, the Commission's concern was that sufficient traffic be available to existing competing international entities to enable them to continue to provide service at revenues which would make them viable. In other words, the basic concern was not the introduction of additional competition, but rather, the avoidance of the fragmentation of existing traffic volumes between additional competitors lest all fail and the public be deprived of this vitally needed service.

The manner in which the Commission effectuated this policy is best illustrated in the famous Oslo case. In that situation Mackay of Delaware, a subsidiary of ITT, sought authority in the late 1930's from the Commission to provde direct radio telegraph service to Oslo, Norway. RCA Communications, which at that time was the only radio telegraph carrier providing such service to OSLO, objected to this competition arguing that Mackay offered or public benefit and would harm the public by causing division of available traffic to the detriment of both itself and Mackay.

The Commission, after lengthy hearings, issued an Opinion wherein it rejected the application of Mackay as not meeting public interest, convenience and necessity standards primarily on the ground of the harm which could occur from the fragmentation or division of traffic without demonstrated offsetting benefits to the public. The case was appealed to the Court of Appeals, and the Commission's position was upheld. At that point, a strict standard of showing public benefit was imposed. The argument that in this country the antitrust laws did not look with favor upon monopoly and that competition should be encouraged was rejected in the absence of the strict standard of proof required. It must be remembered that this decision was adopted prior to World War II while the economy in the United States was generally depressed.

The economic situation changed considerably during the course of World War II. After the War, with the introduction of the Marshall Plan, economic conditions, especially in Europe, improved considerably, traffic volumes increased, and the financial status of the international carriers was considerably enhanced.

In 1948 Mackay again sought authorization to provide competing direct radio telegraph service to Holland, Portugal, Finland and Surinam (the Three Circuits case). RCA, which was the only entity providing direct radio telegraph service to these points, again objected. Once more, the Commission held lengthy hearings. This time, however, even though the standards set forth by the Commission and the Court in the Oslo case were not met, a grant to serve Holland and Portugal was given to Mackay on the basis of "the national policy in favor of competition" where such competition is reasonably feasible. The application to serve Finland was withdrawn and the application to serve Surinam was denied because competition was not reasonably feasible.

The case was appealed eventually to the Supreme Court. The Court held that the Commission could not rely solely on a national policy in favor of competition because such policy was not applicable to the regulated field. It further ruled, however, that competition could be used as an adjunct to regulation if the FCC could find that competition was reasonably feasible and gave some indication of public benefit. Upon remand, the Commission, on the basis of a reopened record, made the findings required by the Court and reiterated its grant. On further appeal, the grant was upheld.

On the basis of this decision, over the period of the next several years duplicating direct radio telegraph circuits were authorized to most major traffic centers in the world.

When Western Union International was created as a result of the divestment requirement in Section 222 of the Communications Act, the Commission again followed its pro-competition policy in the prosperous 1960's by also authorizing Western Union International to open the third competing circuit to most major traffic points. Several years later, when Tropical Radio decided to expand its operations from its Central American base and became TRT, the Commission followed its pro-competition policy by authorizing TRT to provide a fourth direct competing radio telegraph circuit to those major traffic points which were willing to accept TRT as a foreign correspondent.

A different type of problem confronted the Commission when advances in technology made possible first repeatered oceanic cables and, thereafter, satellite communications. In the mid-1950's AT&T had developed and tested cables with repeaters to a point where it was confident that they could be placed across the vast stretches of the oceans and provide high quality, reliable, voice grade service for long periods of time. These cables had, through each step of their development, a capacity sufficiently great to meet all communication demands for both voice grade and record communications between the United States and the transoceanic continent to which they were laid. It was, therefore, not economically feasible for the various competing record carriers in the United States to each lay their own cables and to meet their individuals needs. Furthermore, the foreign entities would certainly not be interested in investing in duplicate cables when one cable would meet foreseeable needs. This development threatened the very existence of the international record carriers, since they could not lay their own cables and would have to acquire needed capacity from the transoceanic cables whose large capacity and high transmission qualities rendered transoceanic high frequency radio communications obsolete. If the carriers were to be reduced to being customers of AT&T, they would in essence be paying the same tariff rate which AT&T would charge retail customers, and there would be no opportunity for these carriers to compete with AT&T.

The Commission resolved this problem in its TAT-4 decision. It required that all transoceanic cables to be laid should be jointly owned by AT&T and the international record carriers. Each, of course, would make an investment proportionate to its expected use and would acquire that proportionate ownership. Furthermore, to prevent AT&T from using its dominant position in the United States to monopolize the provision of international leased voice grade circuits, AT&T was prohibited from leasing further voice grade circuits for such record or alternate record/voice use. AT&T, of course, could continue to provide such leased circuits for voice use.

This action by the Commission insured access to the record carriers to the latest developments of the technology on an equitable basis—that is, pro rata capacity for pro rata payment for facilities desired. In addition, it insured their future viability by precluding AT&T from competing for the growing demand for leased voice grade facilities for record purposes. It, however, insured continued competition in this area between and among the then existing record carriers. The effects of this competition for the sale of leased voice grade circuits for record purposes is apparent in the very great decrease in prices for such leases over the past eighteen years which in other fields have witnessed major inflationary price increases.

In the late 1950's, while the FCC was struggling to develop appropriate policies to accommodate the introduction of repeatered transoceanic cables, the space age dawned. The successful flight of Sputnik by the Russians was followed by an accelerated United States policy which led to Advent, Telstar and Syncom. These developments indicated that transoceanic and intercontinental communications services via satellites would be feasible and in due time competitive with transoceanic telecommunications by means of repeatered cables. The Congress responded to these developments by the enactment of the Communications Satellite Act of 1962. This legislation effectively gave Communications Satellite Corporation a monopoly position with respect to the space segment of international communications originating or terminating in the United States.

The Commission for many years has attempted to reconcile this legislative position of Comsat with its own emerging and developing pro-competition policy. The Commission was also required to implement the mandate in the Communications Satellite Act that the new technology should be made available as promptly as possible and extended to provide global coverage at the earliest possible date. Because of the foregoing legislative requirement, the Commission adopted policies which required the international voice and record carriers to use satellite as well as cable facilities to handle their international traffic. The original requirements looked to a 50–50 utilization of cable and satellite facilities. Therefore, the Commission moved to a policy of proportionate fill and, finally, to a policy of reasonable parity, taking into account the need for diversity.

These policies, which had the elements of market allocation, were nevertheless necessary in the earlier days to insure that terrestrial carriers which had heavy investments in cable facilities would not favor the use of these facilities to the detriment of satellite facilities. Moreover, the usage requirements the Commission implemented insured that the new technology would be given a fair opportunity to prove itself in the marketplace. As the new technology became increasingly acceptable and proved economically feasible, the Commission was able to relax its mandatory requirements for usage and, instead, depend increasingly upon the quality and cost of satellite facilities to insure itself of an appropriate share of the international telecommunications market.

The Commission was given greater latitude in the licensing of earth stations. It could license either Comsat or one or more other carriers to provide earth station facilities. In the hope of minimizing differences and encouraging the terrestrial carriers to increase usage of satellite facilities, the Commission licensed earth station facilities to both Comsat and the international voice and record carriers, giving Comsat a 50 percent interest and requiring that the other 50 percent be shared among the other terrestrial carriers in accordance with expected usage. This gave the terrestrial carriers an investment position in earth stations and incentive to use satellite facilities so as to earn a return on this investment.

The final major problem confronting the Commission related to the question of whether Comsat should be authorized to provide service to the ultimate user. Comsat naturally sought the widest possible market, including authorization to provide satellite facilities and services directly to the government and large users. The terrestrial carriers argued that Comsat was intended to be a carrier's carrier and should provide its facilities and services only to the existing terrestrial carriers.

The Commission was concerned about the long run ability of the terrestrial carriers to be in a position to compete with Comsat if it proposed to and did, in fact, provide satellite facilities directly to the ultimate users. This concern was particularly acute if, in fact, the Comsat tariff to the ultimate users would be the same as the charge to the terrestrial carriers who would be competing with Comsat for the business of such ultimate users. The situation confronting the Commission here was the same as that which confronted the Commission when AT&T laid its transoceanic repeater cables. In that instance, the Commission resolved the problem by requiring AT&T to grant ownership or indefeasible right of user to the record carriers so that their cost for the basic facilities would be the same as that of AT&T. Such carriers would then be in a position to compete with AT&T on the basis of quality and price.

The Commission felt it was not in a position to impose such requirements on Comsat in light of the specific provisions of the Communications Satellite Act naming Comsat the chosen agent of the United States for the space segment of international telecommunications. It, therefore, followed the course of generally limiting Comsat to the role of a carrier's carrier. This would enable the terrestrial carriers to use such circuits without facing the apparently unsurmountable advantage which Comsat would have if it were to offer the same facilities at the same price to the ultimate users as it did to the international carriers. The ability of comsat to market its satellite capacity was insured by the fill requirements imposed by the Commission in the same time frame.

Under this series of Commission requirements, the demand for satellite facilities has continued to grow so that at the present time such facilities account for in excess of 60% of total transoceanic and international communications requirements—and the share continues to increase.

More recently, in accordance with the Commission's more aggressive pro-competition and deregulatory policy, the Commission has proposed modification of its earth station and authorized user decisions to permit comsat to serve the public directly and separate the current joint ownership of earth stations. It has also conducted a study as to how a fair competitive position for the terrestrial carriers could be assured and proposed regulatory and legislative changes to implement its tentative conclusions.

LEGISLATIVE POLICY IN THE FIELD OF INTERNATIONAL COMMUNICATIONS

It is interesting to note that until 1981 all legislation considered by the Congress had as its goal and aim the authorization of a monopoly in international record communications. Such legislation did not address the provision of voice service for two reasons. First, until the introduction of repeatered cables in the late 1950's, international transoceanic voice communications were but a minor factor in the international communications picture. This is so because HF radio, which was then the only feasible means for provision of voice services, did not provide an acceptable quality of service. Secondly, with the introduction of the repeatered cables and the tremendous growth of international voice communications, AT&T emerged as the de facto monopoly in the provision of such services.

The first serious consideration of restructuring the international record communication industry was undertaken in a bill introduced in 1929 and designed to authorize the creation of a monopoly in the record field. This bill did not pass.

Subsequently, during the 1930's in the course of the Great Depression, the Congress conducted numerous studies and held extensive hearings with respect to the structure of the international telecommunications industry. All of these looked toward the authorization of a monopoly in the international record field. In fact, during World War II when the Congress passed domestic merger legislation, the bill originally included provisions for international merger. This portion of the bill was deleted at the request of the Department of the Navy, which was concerned about problems which might result from attempting to integrate the activities of the various international record carriers in the time of war. This was done in full expectation that an international merger bill would be passed after the war ended.

In fact, at the end of World War II there were further hearings held in the Congress looking toward the enactment of international merger legislation. At the time, although the bill was supported by most agencies of government, the Department of State objected vehemently to the creation of a monopoly. Congressional committees were disturbed by the failure of the Executive to present a unified position. They, therefore, terminated their hearings pending the presentation of such a unified position.

A Telecommunications Coordinating Committee was set up under the Department of State in an attempt to arrive at such a position. However, the Executive agencies failed in this attempt. President Truman then appointed a special group to study the matter. Its report, "Telecommunications, a Program for Progress," recommended against international merger. It is to be noted that this report was filed in 1950, after the international telecommunications industry had emerged from its post-war problems and was operating profitably. It was at the same time the Commission embarked on its own pro-competition policy in the above-described Three Circuits case involving authorizations to Mackay to open circuits to Holland and Portugal.

A further attempt was made to procure the enactment of merger legislation in the late 1950's after the development of the repeatered cables raised serious questions about the viability of the international record carriers. This attempt also failed and the Commission resolved the issue in its TAT-4 decision, which gave the record carriers the opportunity to become joint owners of the cables and denied AT&T authority to offer leased voice grade circuits internationally for record use.

The next steps looking toward international merger took place in the early 1960's when the advent of satellite communications again raised questions about the future viability of the terrestrial record carriers. Furthermore, the Communications Satellite Act provided a precedent for monopoly legislation by making the Communications Satellite Corporation the chosen instrument in the provision of the space segment for international satellite communications originating and terminating in the United States.

First, there was an intergovernmental agency study which gave a contract to SRI to assist in the development of policy. This study concluded its work by recommending the creation of a single entity to provide and operate international telecommunications facilities with the possibility of competition between entities acquiring facilities from the monopoly.

This report was submitted to President Johnson, who took no action on it and, instead, appointed a Commission to make an additional study under Presidential auspices. This study group was headed by Mr. Eugene Rostow, who was the Under Secretary of State for Political Affairs. It completed its work in late 1968, after the elections at which Mr. Nixon became President. The study which again looked with favor on a potential monopoly for the provision of international communication facilities, was never adopted by the Nixon Administration. Instead, it was merely released for review and study by interested parties.

The head of the Office of Telecommunications Policy in the Nixon Administration urged the adoption of clear and unequivocal procompetition policy by the government. Since that time, there has not been any serious consideration of merger legislation in the international telecommunications field.

As has been noted above, the advent of the space age led to immediate and great interest in the provision of communication facilities via satellite. Because of the great public interest in all space matters, the Congress determined that specific legislation was necessary to deal with this new development. Accordingly, it passed the Communications Satellite Act of 1962, which created the Communications Satellite Corporation as the chosen instrument of the United States for the provision, in cooperation with other nations, of the space segment for international satellite communications facilities. Although the legislation talked in considerable detail about the enhancement of competition, the fact remains that this legislation did create a single entity with monopoly rights in the international space segment. This development also necessitated the above-described steps taken by the Commission in its attempts to insure the furtherance, if not the very existence, of the competing international record carriers.

ANALYSIS OF INTERNATIONAL POLICY

The one thing that stands out above all else in any analysis of international telecommunications policy prior to the current Congressional, Executive and Commission actions to combine enhanced competition and deregulation is pragmatism. It is true that there is a strong and abiding tendency which has been evident over all of the decades discussed hereinabove in favor of competition in record communications. No effective steps have, however, been taken to enhance competition in switched voice communications where A.T. & T. continues to enjoy a de facto monopoly. It is also true, however, that this was an underlying tendency which in essence said if all other things were equal, clearly the policy to be followed is the one which favors and enhances competition. It is equally true in normal and practical situations that all things are rarely equal.

In the earliest days, when marger legislation first began to be considered, one of the "unequals" was the fact that in the United States there was and always had been competing international record carriers. In most countries abroad, however, the provision of telecommunications services was either an activity of a government, that is, the Ministry of Posts, Telephones and Telegraphs, or an agency owned and controlled by the government. In any event, with almost no exceptions, the services provided were monopoly services.

There was great concern that the competing carriers in the United States would always be at a disadvantage in dealing with foreign monopolies. Such disadvantage was believed to result from the fact that the foreign monopolies could and did control the distribution of traffic outbound from the foreign countries to the United States. It was felt, with considerable justification, that in the absence of regulatory intervention, the foreign monopolies could and would require divisions of tolls more favorable to themselves from the American carriers under the threat of transferring traffic available to that U.S. carrier which gave them the most favorable divisions. This consideration provided a basis for concern and desire to put the American carriers on an equal footing by authorizing the merger of international carriers.

In the absence of merger legislation, the commission adopted a policy of requiring the international record carriers to obtain approval for any change in divisions of the agreement which departed from a 50-50 division between the U.S. carriers and their foreign correspondents. This action effectively resolved concerns about divisions.

A second concern for a long period of time from the 1930 depression through early post-war period, to the period of major technological changes—i.e., the repeatered cables and satellites, was purely economic. In each one of these cases there was concern either that total volumes were not and would not be sufficient to support more than one carrier or that technology would make it impossible for the record carriers to remain viable. Thus, the concerns about the economic effects of the fragmentation of the market outweighed any possible tendency to support free and unregulated competition. Instead, they led to a consideration of merger legislation.

In each instance, the economic situation changed sufficiently or the Commission devised regulatory means for overcoming disadvantages imposed on the record carriers by technological advances to insure the viability of the competing carriers so that, in the long run, merger legislation proved unnecessary.

The key factor, however, in each instance is the practical approach taken by the Congress, the Executive and the Commission to resolve the threats posed to the competing international carriers. If the advantages which foreign monopolies enjoyed in divisions were the threat, the Commission, as noted above, exercised its jurisdiction to prohibit the carriers from entering into agreements calling for anything other than 50-50 divisions without Commission consent. When economic circumstances made fragmentation the major concern, the Commission, as in the Oslo case, refused to authorize additional competition to safeguard the viability of existing carriers.

Where technological change threatened viability, the Commission adopted policies to insure that those threatened had reasonable opportunities to compete. As the demand for telecommunications continued to grow year after year, the Commission gradually permitted increased competition. This was first done in the so-called Three Circuits case and followed up with additional authorizations that increased the major competing international record carriers from two basic entities to four or five today. It is to be noted that in all this time A.T. & T. maintained its de facto monopoly in switch international voice services.

It must, however, be noted that until a few years ago, basic Commission policy favored increased competition under the general regulatory shield. In other words, following the ruling of the Supreme Court in the Three Circuits case, the Commission used competition as an adjunct to regulation and not as a substitute for it. In those days, it was recognized that in this rapidly evolving and developing field, it was impossible to predict what future circumstances might be. Because of the vital importance of telecommunications, it was felt that regulation has a basic and underlying role and required the Commission to maintain jurisdiction so that it could act promptly if developments of one type or another appeared to threaten the viability of carriers and, therefore, the availability of high quality service at reasonable rates. In other words, competition was looked upon as one of a series of tools available to assist the FCC in the discharge of its basic regulatory responsibility to insure the availability to all people of the United States a rapid, efficient worldwide wire and radio communications service with adequate facilities at reasonable charges.

THE CURRENT SITUATION

In the mid-1970's the basic thrust described above began to change. It was felt that with increased competition, the need for regulation would be decreased. It followed, therefore, in the minds of those advocating this course that if there were sufficient competition, the need for regulation would disappear. The Commission and the Congress both, therefore, looked toward the creation of an environment in which there would be sufficient competition to remove the need for regulation. The extent of the competition, rather than its results, was to be the litums test. Once "effective" competition and deregulation, therefore, seem to have become goals rather than tools.

This is to be contrasted with the former approach which was concerned with making available to all people the necessary quality of service at reasonable costs using whatever tool, more competition, or more regulation, or a combination of the two, would best serve that goal.

The legislation in the domestic area, as well as the instant bill, contain lengthy introductions which extol competition and accompanying deregulation as goals in and of themselves. Indeed, the bill itself is entitled "The International Telecommunications Deregulation Act of 1982." This title is implemented by numerous provisions of the bill. For example, the very first finding encompasses the phrase, "Competition is a more efficient regulator than government." It is recognized in all of the proposed legislation that regulation may be necessary in those services where competition is not effective. However, the proposed legislation puts the burden on those who wish to continue regulation of particular services rather than those who seek deregulation. The bill would deregulate any service which the Commission does not find "must continue to be regulated." The Commission is required to review at least every two years any service which it had determined should be regulated, and if it finds there is effective competition it is to deregulate such service. There is no companion provision mandating a review of deregulated service to determine whether the public interest would be served by or require a return to regulation.

SPECIFIC COMMENTS

It is noted, first, that this bill is structured essentially as though it were separate and apart from the Communications Act of 1934. It does not rely on the general and basic provisions of the Communications Act which are applicable to all services and limit itself to problems which are specifically related to international communications within the framework of the basic Act. Instead, it begins with findings, purposes, definitions, a statement of policy, and a statement of the authority of the Commission. In this respect, these parallel certain provisions which are now set forth in the Communications Act of 1934. In addition, they parallel even more closely many provisions set forth in S. 898.

This duplication in the same or similar legislation, in addition to burdening and lengthening the legislation, carries with it an additional danger. To the extent that any of the language in the provisions identified differs from the basic language in either the Communications Act or S. 898, should that become law, it would, under current canons of legislative interpretation, probably be deemed to have a different meaning. This is so because it has been held that where the same subject is covered by different legislation using different terminology, there must be intent for differences in meaning. Such a situation can only give rise to uncertainty and possibly litigation. It is, therefore, recommended that the basic need for the parallel language be reviewed carefully, and unless there is some need which is not apparent from a reading of the bill, such duplication be eliminated. If some small segments require clarification, they can very well be introduced as amendments to the early portions of the Communications Act or be retained in this bill with an introductory statement that his change is applicable only for the purposes of the part relating to international telecommunications.

As noted above, the provisions in Section 607 and 607(A) put a heavy burden upon those who favor retention of regulation. It would appear that it would be much more effective in the public interest to put the burden on those who advocate change—in other words, so long as a service is subject to regulation, it should remain there unless a showing is made on the record that the public interest in all of its aspects is better served by the deregulation of that service. Conversely, once a service is deregulated, the burden should be upon those seeking reregulation.

The provisions with respect to periodic review should apply to both regulated and deregulated services so that at all times the basic goal should be insuring that the services meet the public interest test whether they are regulated or deregulated. Merely because a service has been deregulated at one time under certain circumstances does not necessarily indicate that it should continue to be deregulated thereafter despite possible changes in circumstances which indicate a need for regulation.

It is noted that in Section 608, the Commission is prohibited from regulating resale or shared use of communications services. In this connection, it is to be noted that many foreign telecommunications entities may communicate or interconnect only with common carrier entities abroad. Under these circumstances, the deregulation of resale services could be counter-productive in that it would raise an additional and perhaps insurmountable barrier to ability of the providers of resale service to make appropriate arrangements for interconnection with foreign telecommunications entities. This is so because it may very well be argued that unregulated services are not viewed as common carrier services abroad. Accordingly, consideration should be given to the granting of some type of authority by the Commission over resale carriers that would be sufficient to give them the status of common carriers and thereby remove a barrier to interconnection with foreign correspondents abroad. Furthermore, in view of the importance of international telecommunications, consideration should be given to allowing the Commission to retain jurisdiction over resale services to prevent discrimination, to require interconnection, and to prevent abrupt termination of services which may very well adversely affect users who have come to rely upon the facilities of a particular resale carrier.

There seems to be a contradiction between the concept of regulated service and the tariffing requirements as set forth in Section 613. Clearly, services which are not deregulated are those where a need has been found for continued regulation, particularly because of the absence of effective competition. Under such circumstances, the provider of a regulated service may be considered to have considerable market power. The purpose of regulation is to prevent such carrier from abusing that market power with respect to the regulated service. One of the ways that abuse of market power can be prevented is by giving the Commission appropriate power over the charges and practices of such carrier with respect to and in relation to the regulated service.

The provisions of Section 163 do not give the Commission such power. They put the entire burden on the petititoner, allow the tariff to go into effect pending hearing, and make no provision for refunds in case the charges or other terms and conditions are found to be unjustified and unreasonable after hearing. It would appear that in the logic of the bill itself, namely, that whenever it is deemed necessary that a service be regulated, it follows that there is no effective competition. This in turn requires that the burden of justifying charges should be placed on the carrier, and provisions with respect to tariffs substantially like those now in effect should be retained for regulated services, and especially services provided by dominant carriers.

On the other hand, Section 614 appears to give the Commission too much power with respect to contracts. Here, the Commission is given the power to vacate or modify any contract which relates to regulated services if it is not consistent with the purposes of the title or unjustly discriminates against any carrier. (Note: Users are not mentioned!) First, it is interesting to note that the bill is more concerned with maintaining parity among carriers than protecting users of the services. This perhaps is not inconsistent with the thrust of the legislation which relies on competition. However, it certainly does not appear to be consistent with the basic obligation of government to protect the interests of users, particularly in such an important area as international communications, against carriers which have sufficient market power to require continued regulation of a particular service or services.

It is true that the Commission should have regulatory jurisdiction, but perhaps the proper way to do this is to require carriers to submit drafts of contracts to the Commission before they are finalized, which in a specified period could indicate, with appropriate reasons, why particular provisions or entire contracts were inconsistent with the statute and the interests of users as well as of other carriers. This is particularly important with respect to contracts relative to divisions of tolls to prevent foreign entities from "playing" one competing U.S. carrier against another in bidding for inbound traffic by offering the foreign entity more favorable divisions.

Sections 616 and 617 both relate to international facilities. There is, however, no connection between them. It is understandable in light of past history that the Congress would seek, by legislation, to insure prompt action on proposals to provide international facilities and services. However, the bill as it now stands does not provide for an orderly method in insuring such prompt action.

The important thing with respect to international facilities is that they should be installed in accordance with a well thought-out plan prepared in consultation with foreign correspondents and designed to assure, on the one had, that the most efficient facilities required to meet needs will be built, and on the other hand, that there is no substantial overbuilding of facilities by regulated or dominant carriers.

Under the above circumstances, it would appear that the provision of Section 617 should be a prelude to the provisions of Section 616. In other words, procedures for the assessment of proposals and the development of guidelines on an overall and general basis are the first requisite. After that has been done, as outlined in Section 617, appropriate procedures for authorizing construction should be specified. It would be appropriate to require that any proposal for additional facilities or the enhancement of existing facilities should indicate on the face that it is in conformity with the guidelines developed in the consultative process under Section 617.

Furthermore, the provisions of Section 616 ignore the world as it exists. Major intercontinental facilities are now provided only by AT&T (cables) and Comsat (satellites through Intelsat). These are monopoly suppliers of capacity. There is *no* effective competition or prospect of effective competition. Therefore, licenses under public convenience and necessity standards should be mandatory. There should not be any question of the need for the submission of applications for Certificates. That should be mandated. Furthermore, there does not seem to be any adequate reason why carriers providing regulated services should be completely free to establish additional international facilities by participating in cable ownership or satellite sharing. Again, the holding that the carrier is regulated indicates the possession of substantial market power. Carriers with substantial market power should not be permitted complete freedom in making investments. Instead, they, too, should be required to secure Certificates of Public Convenience and Necessity.

Finally, the complete freedom given in Section 616(a) is difficult to understand in light of the fact that foreign concurrence is universally necessary before facilities are constructed.

There appears to be an inconsistency between Section 616(a) and the obligations under the Intelesat Definitive Arrangements. The latter require that before any signatory may propose to provide international services, certain procedures pursuant to Article XIV must be complied with. Section 616(a) would, on its face, purport to permit any entity other than a dominant carrier to provide international services via non-Intelsat satellites without mention of or reference to the obligations of the United States under the Definitive Intelsat Arrangements.

In sum, Sections 616 and 617 should be coordinated, regulated services, and especially services provided by a dominant carrier should be subjected to certification. In addition, no entity should be permitted to act in a manner inconsistent with the obligations of the United States under the Intelsat Definitive Arrangements.

A question arises as to the intent and purpose of Section 623 relating to customer premises equipment. There are detailed provisions in S. 898 and H.R. 5158 which relate generally to customer premises equipment. Since customer premises equipment is normally used interchangeably for local exchange, intrastrate interexchange, interstate interexchange, and international telecommunications services, there is a basic question as to why these provisions are specifically included and limited to international telecommunications services. The inclusion of this section would raise a question as to whether different standards are to be applied for customer premises equipment use for international telecommunications services and also raises a question as to the interrelationship between Section 623 and the companion sections in other legislation which is now pending or may be passed. Here again, different provisions in different bills covering the same equipment may lead to confusion as to intent and difficulty in uniform application to the same equipment used at different times for the numerous services listed above.

Section 624 relates to equitable market access and appears to cover the same ground as the reciprocity provisions in S. 898 in different terminology. It is noted that there were similar provisions in H.R. 5158 which appear to have been eliminated from the final version because of the Administration's objections to sectoral legislation on this subject. Furthermore, witnesses for the Executive Branch have testified in opposition to this provision. It is also noted that there are differences in terminology within the bill in different sections dealing with the same subject. For example, Section 624(a) refers to equitable market access, whereas Section 607(b)(2)(E) refers to "fair access." A coordinated position on this subject is important, not only because of its domestic importance, but also because of its implications on the entire gamut of foreign relations generally and international telecommunication relations in particular.

It is noted that Section 620 provides for a fully separated affiliate of the dominant carrier. The bills relating to deregulation of domestic telecommunications services, which also included provision for fully separated affiliates of dominant carriers, recognized that creation of such fully separated affiliates could create problems for employees of the dominant carrier. Accordingly, both of these bills, S. 898 and H.R. 5158, included detailed and specific provisions for employee protection. In this regard, it is to be noted that the bills followed ample precedents established when other legislation providing for the reorganization of government regulatory activities was enacted. In each case, the other legislation also included provisions for employee protection. Accordingly, it is recommended that S. 2469 include provisions for employee protection similar to those in the now passed S. 898 for In H.R. 5158, which was just withdrawn from consideration for this Session.

OTHER MATTERS

Since, as indicated above, I am primarily expert in and concerned with basic international telecommunications, no comments are submitted with respect to the provisions of the bill relating to the International Telecommunications and Information Act or the miscellaneous provisions under Title III relating to miscellaneous matters.

STATEMENT OF INTERNATIONAL BUSINESS MACHINES CORP. (IBM)

IBM applauds the effort of the Communications Subcommittee in developing international telecommunications legislation that will stimulate informed debate on an issue of vital importance to this nation and the world.

Not only is the telecommunications sector one of the fastest growing sectors of the U.S. and world economies, but international telecommunications services provide key support for a broad range of extremely important commercial and government activities. Therefore, international telecommunications legislation has a major impact on and is of keen interest to both suppliers and consumers.

IBM fully endorses the S. 2469 "findings" that rapid advances in technology are making possible increased competition in the provision of international telecommunications services; that competition is a more efficient regulator than the government; and that deregulation of international telecommunications services should occur when effective competition is present. We also agree that international telecommunications services and facilities are joint undertakings between the U.S. and numerous sovereign nations and that the interests of those sovereign nations must be considered in the development and implementation of U.S. policy, as reflected in the S. 2469 "Statement of Policy".

We are concerned, however, that certain mechanisms established in S. 2469 may fall short of achieving your objectives and may actually work counter to the interests of both users and suppliers of telecommunications services and to those of the information industry overall. These concerns will be spelled out more fully in the following comments, which we have organized into three basic parts; I. Deregulation, II. Equitable Market Access, and III. Organization.

PART I—DEREGULATION

IBM fully agrees with the pro-competitive, deregulatory objectives of title I of S. 2469. In numerous filings before the Federal Communications Commission, and in testimony before both Houses of Congress, IBM has encouraged the maximum feasible reliance on unregulated competition to ensure the availability of a diversity of telecommunications products and services.

No industry today gives greater evidence of the benefits of competition than the information processing industry—unregulated since its inception. And since the same technologies that serve this industry also serve the telecommunications industry, marketplace forces can provide a similar stimulus for new and innovative telecommunications services and products.

In the late 1960s, the FCC began to recognize that its statutory mandate under the Communications Act of 1934 would best be fulfilled by allowing competition in the provision of telecommunications products and services. And where competition is effective, the FCC now recognizes that regulation serves no purpose but only distorts the marketplace and should be eliminated.

In the Second Computer Inquiry, the FCC properly limited regulation to basic transmission services. It decided to rely on the competitive marketplace, rather than regulation, to provide all customer premises equipment and enhanced services, and to allow carriers to participate in these activities on an unregulated basis, subject to safeguards to protect users of essential transmission services from potential monopoly abuses. A great deal of competition in domestic telecommunications has already developed. As a result, the FCC has also relaxed the regulatory burdens imposed on basic transmission services provided by carriers lacking significant market power, and is now proposing to deregulate such carriers entirely—a move which IBM fully supports.

S. 898 gives statutory endorsement to this procompetitive, deregulatory direction and establishes as U.S. policy the preference for marketplace forces rather than regulation, wherever feasible. But S. 98 explicitly excludes international telecommunications from the scope of its amendments to the Communications Act of 1934, recognizing that there is a key difference in the international environment.

As is recognized in section 605(b) of S. 2469, the provision of international telecommunications services and facilities is necessarily a joint undertaking between U.S. and foreign entities. Complete competition in international telecommunications cannot be achieved through U.S. regulatory or legislative fiat alone. However, the U.S. can and should maintain its leadership role in establishing an environment conducive to easing restrictions in the provision of telecommunications products and services worldwide.

The message of the FCC and pending Congessional proposals is clear: only basic transmission services need be regulated, and then only until they are subject to effective competition. Countries throughout the world are watching closely, and some are starting to move in a similar direction. Therefore, the outer reach of the FCC's regulatory arm must be clearly and unambiguously delineated in international telecommunications, as well as in domestic.

Title VI should clearly establish the basic transmission boundary as the outer limit of the FCC's regulatory jurisdiction, and explicitly prohibit the regulation of information services in the U.S., regardless of the nationality of the service provider. FCC jurisdiction over customer premises equipment (CPE) should be limited to that which is required to establish and enforce the minimum technical standards needed to prevent harm to transmission facilities, which should be uniform for all CPE installed in the U.S., no matter where it is manufactured. The FCC should not be permitted to deny registration to any CPE that meets such standards.

Even within the basic transmission envelope, regulation is unnecessary for services in which a carrier lacks significant market power. We therefore endorse the explicit FCC authority in section 609(a) to forbear from unnecessary regulation. We also endorse the establishment of statutory guidelines, as in section 607(b), to determine when a transmission service is subject to effective competition and the mandate to the FCC in section 607A(c) to deregulate services subject to effective competition.

The deregulatory approach of S. 2469 clearly contemplates that at least some international carriers will offer both regulated and unregulated services. We therefore endorse the provisions of section 619(a)(2), which require carriers to establish an accounting system which properly separates all costs between regulated and unregulated operations, in order to ensure that carriers do not cross-subsidize their unregulated offerings with revenues from their regulated services, either domestic or international.

In addition, when a carrier uses its own regulated facilities to provide enhanced services, it should be required to charge its enhanced service operations the same rate for the underlying transmission as it charges to unaffiliated entities; that is, such enhanced services should be provided on a "resale" basis, as established in the FCC's Second Computer Inquiry.

On the subject of resale, the FCC found in its domestic proceedings that permitting resale and shared use serves the public interest and benefits both carriers and users. It was unsuccessful in its efforts to bring the same benefits to international telecommunications in its international shared use/resale proceeding. The objectives of that proceeding, and of section 608, are inconsistent with CCITT Recommendation D.1 (which the U.S. did not oppose at the most recent ITU plenary session). This recommendation prohibits resale of leased circuits, and an effective resale offering cannot exist without the cooperation of the foreign telecommunications administrations which are not subject to U.S. law.

Nonetheless, because IBM believes that unregulated international resale and shared use are in the public interest we urge the U.S. now to establish this policy position. However, rather than attempting to mandate it through legislation, we think it wiser to achieve it through negotiation within such fora as the CCITT, and in bilateral and multilateral negotiations with foreign administrations. As a transitional mechanism, carrier restrictions on resale and shared use could be permitted, but only to the extent the Commission determines that a particular restriction is consistent with approved U.S. policy regarding applicable CCITT recommendations.

Section 617 gives statutory endorsement to the important role the FCC can play in discussions with foreign administrations on the construction and utilization of international telecommunications facilities. Section 616(a) allows any person (other than a dominant carrier) to construct, acquire, and operate new international facilities and provide any telecommunications service, upon notification to the Commission. Because a U.S. carrier is responsible for only one-half of any given international transmission, however, the effectiveness of deregulation will depend upon a U.S. carrier's ability to negotiate appropriate agreements with foreign correspondents. And foreign administrations have often exhibited reluctance to negotiate with new U.S. entrants. This is an area where the U.S. government can play a key role in advancing the status of competition. So long as the U.S. maintains a statesmanlike posture in advancing its pro-competitive policies through negotiations, we are convinced that the objectives of title VI can be achieved.

The U.S. has been a leader in establishing a pattern of unregulated competition in telecommunications. This is a pattern we can expect other nations to follow, to varying degrees, once they recognize the benefits accruing to the American people from the U.S. direction. In most countries, telecommunications systems are owned and operated as a government monopoly, and, in many of them, we cannot expect a radical departure from this approach in the near term. Even in the U.S., where telecommunications services have always been provided by the private sector, they were provided in a monopoly environment until relatively recently, and the road to effective competition is only now being mapped out.

What we can hope to see in other countries is a recognition that any monopoly must be limited to, at most, basic transmission services, and not include enhanced services, or customer premises equipment, which can best be provided under conditions of fair competition.

The U.S. cannot impose its will on other sovereign nations, but it can help to accomplish these objectives by good example and through negotiation. It is in the interests of both suppliers and users of telecommunications and information services and products to have the greatest practical freedom of action. While the U.S. has taken great strides with the deregulation of CPE and enhanced services, with the FCC's registration program, and with growing competition in transmission services, many countries are only beginning to move in this direction by opening up their own monopoly markets in telecommunications equipment and services other than basic transmission. The U.S. can accelerate this trend through a coordinated U.S. policy espousing the benefits of competition in all aspects of telecommunications.

PART II—EQUITABLE MARKET ACCESS

Section 624 establishes an "Equitable Market Access" criterion for FCC consideration when deciding whether to admit or exclude the telecommunications and information processing products and services of foreign suppliers. We understand the intent is to provide additional leverage to the FCC to pry open foreign telecommunications markets, especially in light of U.S. efforts to facilitate entry into its domestic marketplace. While IBM supports an overall objective of open market access—for both U.S. and foreign companies—we believe this provision,

(1) Is inconsistent with sound policy-making principles in U.S. international trade policy and with the U.S. obligations under the General Agreement on Tariffs and Trade (GATT);

(2) Provides the FCC with powers beyond its existing expertise and resources; and

(3) Could harm domestic suppliers and end users of international telecommunications and information processing equipment and services.

We understand and share Congressional concerns about trade restrictions in other countries and their dampening effects on U.S. companies' ability to expand their overseas markets. We do not believe, however, that sectoral reciprocity, like that embodied in section 624, is the best way to address these barriers to trade.

Reciprocity has been debated extensively within the Senate Finance Committee and the Administration. Hearings on legislation to incorporate reciprocity as a key element in U.S. trade policy have been held before the Senate Finance Subcommittee on International Trade with testimony being heard from both public and private sector witnesses. We in IBM welcome the effort to strengthen the long-range U.S. objectives of seeking fair and equitable market opportunities for U.S. companies overseas.

IBM believes S. 2094, the Reciprocal Trade and Investment Act of 1982, which has been reported by the Senate Finance Committee, is the proper vehicle for giving the U.S. Government power to negotiate with other governments for the removal of their barriers to trade and to take appropriate action if those negotiations fail to produce a satisfactory solution. In essence, this is achieved by:

(1) Giving the U.S. Trade Representative a negotiating mandate to win agreement on removing barriers to trade in services and high technology and on international investment. Specific negotiating objectives include the reduction and elimination of barriers to trade and the development of internationally agreed rules (including dispute settlement procedures) which are consistent with U.S. commercial policies.

(2) Defining causes for action under Section 301 of the 1974 Trade Act (i.e., foreign practices which are "unreasonable, unjustifiable, or discriminatory") to include, among other items, any foreign government "act, policy or practice which denies fair and equitable market opportunities."

(3) Clarifying that Section 301 applies to trade in services, and broadening the same section to include foreign direct investment.

We prefer to see these matters dealt with at the negotiating table. That is consistent with U.S. international obligations under the GATT, specifically the principles of National Treatment and Most Favored Nation treatment. Further, this approach is consistent with the position taken on behalf of the Reagan Administration by Ambassador Brock in his March 24, 1982 testimony before the Senate Finance Committee.

Giving federal regulatory agencies like the FCC retaliatory authority against other countries based on sectoral reciprocity is a concept which IBM opposes. In the June 14, 1982 testimony on S. 2469, Chairman Mark Fowler of the FCC (as well as Administration witnesses) acknowledged that sectoral reciprocity is counter-productive. Because of the differing approaches of different governments to telecommunications policies, industrial policies, trade policies, etc., U.S. responses must be broad enough to balance the competing and/or complementary needs of different economic segments.

Our second concern about section 624 is that it provides the FCC with expanded authority which Chairman Fowler also questioned. In his words, ". . . the FCC has neither the expertise nor the awareness of broader considerations of trade and foreign policy which are necessary to make the threshold judgments in this area." IBM believes that only the U.S. Trade Representative has the necessary expertise in trade policy matters to weigh the complex requirements of various segments of American industry in the context of trade negotiations.

This is not to say that the FCC should have no voice in trade policy matters as they affect telecommunications. IBM favors having the FCC in an advisory role to the U.S. Trade Representative on such trade issues.

PART III—ORGANIZATION

Title II of S. 2469 establishes a Task Force to coordinate and develop comprehensive U.S. international telecommunications policies. IBM feels such coordination in U.S. government policy-making is essential and would be a useful tool for the domestic industry.

However, we would like to point out that the nature of such coordination has been subject to considerable debate. For example, an Interagency Group already exists under the chairmanship of the Under Secretary of State for Security Assistance, Science and Technology. Also, the Interagency Trade Policy Committee, under the chairmanship of the U.S. Trade Representative, reviews and coordinates U.S. international trade and investment policy. And the trade bill, S. 2094, would authorize the Secretary of Commerce to set up a Service Industries Development Program to coordinate policies for promoting U.S. service industries and for providing staff assistance to the USTR regarding trade negotiations affecting service sector interests.

We believe the approach adopted in S. 2469 should be consistent with the existing structures and those proposed in S. 2094 for developing timely and consistent American policy initiatives in the international trade and telecommunications areas.

SUMMARY

IBM fully agrees with the deregulatory objectives of S. 2469. While we have concerns about the wisdom of certain sections of the legislation, we agree that a sound international telecommunications policy is needed and should be developed as the result of intelligent debate rather than on a haphazard evolutionary basis. Any international telecommunications policy that is developed should be complementary to U.S. trade policy and should provide the appropriate Administration organization for efficient and effective implementation. Once a coordinated policy is established, we should seek to achieve our objectives through coordinated negotiations with foreign suppliers, users, PTTs and government officals.

We stand ready to work with the Subcommittee to develop legislation that will lead to a sound international telecommunications policy.

STATEMENT OF DONALD KUYPER, PRESIDENT, HAWAIIAN TELEPHONE CO.

Mr. Chairman and Members of the Subcommittee. On behalf of the Hawaiian Telephone Company, I thank you for the opportunity to submit this statement for the Record regarding S. 2469, the International Telecommunications Deregulation Act of 1982. International telecommunications is a vital national resource, and your willingness to address the complex issues in this field will, I am sure, ultimately benefit our national interests.

The Hawaiian Telephone Company, founded under the laws of the kingdom of Hawaii in 1883, provides local, interstate and international service to the almost 1,000,000 residents of Hawaii as well as the international-oriented businesses and military commands located in the islands. We operate as the hub for communications networks in the mid-Pacific—both civilian and military—and have direct correspondent relationships with forty-seven foreign countries and several U.S. territories. In addition we provide world-wide service through interconnection with other companies. In 1981 our total investment in plant and equipment exceeded $975 million. Because Hawaii's strategic Pacific, we have a deep and active interest in international telecommunications—and in the issues which the Subcommittee is examining.

The International Telecommunications Deregulation Act of 1982 provides a framework for revising U.S. policy in favor of competition in the international telecommunications market-place. Moreover, the bill mandates deregulation where effective competition exists. Significantly, the bill also recognizes the partnership nature of international telecommunications and requires that the interests of other sovereign nations be considered in the implementation of U.S. policy. However, we are concerned, that in practical effect, promotion of competition, mandatory deregulation and international cooperation may prove to be incompatible. Moreover, stringent application of these principles, and of certain specific provisions of S. 2469, may not benefit overall U.S. interests.

For example, the bill would require that existing tariff restrictions on the resale of international telecommunications services be immediately eliminated. Those tariff restricitions, however, are consistent with existing international practice and with the currently applicable "D" Series of Recommendations formulated by the Consultative Committee on Telephones and Telegraphs of the International Telecommunications Union (CCITT). An immediate, total legislative ban on such restrictions might well be considered an abrogation of our responsibilities within the international community, particularly the CCITT and the ITU and could result in the disruption or discontinuance of certain types of international service, specifically flat-rate leased channel service. A phased approach to the introduction of international resale, one that gives greater recognition to the principles of international cooperation, would better serve the ultimate interests of the U.S. consumer.

I have in mind the introduction of resale on a country-by-country, or experimental, basis that includes consultation with foreign correspondents and with relevant international organizations.

The pro-competition principles which are the cornerstone of this bill are not universally shared by our telecommunications partners. Many of them operate as governmentally-mandated monopolies, and revenues derived from the monopoly provision of telecommunications services are used for governmentally-determined purposes. Given the diffenent philosophies which underly the provision of international telecommunications services, some degree of tension will naturally result. An important first step to ameliorating that tension is the bill's recognition of the partnership nature of international operations. Nevertheless, lawmakers, policy-makers and service providers must exercise some caution and restraint in promoting competition as the most effective regulator of international services.

In addition to our general concern that the bill does not adequately balance its potentially conflicting purposes, we are interested in two other specific issues.

Section 607 requires the Commission to classify services and carriers. The purpose of this section is to identify those carriers with a substantial amount of market power in order that anti-competitive behavior by those carriers, such as unlawful cross-subsidization between regulated and unregulated services might be prevented. We are in full accord with this purpose. However, the Section is subject to interpretation and we believe that the intent of the proposal should be clarified. We understand Section 607(c) to require that the Commission only classify as dominant any carrier dominant in a substantial percentage of the regulated services markets. Under this interpretation Hawaiian would not be classified as a dominant carrier since we would provide regulated services in only one market. This interpretation is consistent with the deregulatory philosophy of the bill. Moreover, it recognizes that the approach taken in this bill, unlike that taken in the domestic legislation (S. 898), emphasizes the classification of services, not carriers, and provides safeguards based upon services that regulated rather than carriers that are dominant.

A second specific area of interest to Hawaiian concerns the provision of international satellite services.

Under the provisions of Section 304 of S. 2469 the Communications Satellite Act of 1962 would be amended to allow the Commission to authorize persons other than carriers to acquire channels of communication directly from Comsat whenever the Commission finds such acquisition to be in the public interest. This provision is a departure from existing arrangements which restrict Comsat to a "carrier's carrier" role. The development of the "carrier's carrier" approach was in recognition of the unique status of Comsat as the sole U.S. Representative to INTELSAT, the international satellite organization. In that capacity Comsat makes investment in and controls access to the INTELSAT system.

It is clear that its unique role would allow Comsat the opportunity to engage in anti-competitive behavior by restricting a competitor's access to INTELSAT, either operationally or economically. The language of Section 610 of S. 2469 governing interconnection with regulated services could be construed to require "cost-based" access to INTELSAT, but no provision is made to assure that Comsat's competitors would not suffer an operational disadvantage. Nor does the bill recognize the significant difficulties associated with determining Comsat's INTELSAT-related costs. Without the addition of these safeguards, Hawaiian could not support Section 304.

In this brief statement, I have highlighted our general and specific concerns with the provisions of S. 2469. It is nevertheless true that we appreciate the efforts of the Subcommittee to resolve some of the difficult issues the United States faces in the international telecommunications and information field. We applaud your emphasis on the development of coherent U.S. national policy and we look forward to the results of your efforts.

U.S. Council for International Business,
June 18, 1982.

Hon. Barry M. Goldwater,
Chairman, Subcommittee on Communications of the Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: I understand that you are conducting hearings this week on S. 2469, the International Telecommunications Deregulation Act of 1982.

The International Chamber of Commerce (ICC) is very interested in international telecommunications and at the beginning of 1981 established a Commission on Computing, Telecommunications and Information Policies. This commission has examined the alternatives in telecommunications policy which might provide an optimum environment. The resultant report, completed over the past year and entitled "The Liberalization of Telecommunication Services—Needs and Limits," has been endorsed by the ICC as its formal position.

The International Chamber of Commerce, headquartered in Paris, is recognized by more than 150 governmental, national, and international bodies as the spokesman of international business. The U.S. Council, for whose Telecommunications Policy Committee I served as Chairman, is the largest in a network of more than 50 affiliated "National Committees" of the ICC and was very active in the drafting of this ICC position paper.

I have enclosed a copy of this paper and would like to request its inclusion in the hearing record for S. 2469.

Sincerely yours,

Richard G. Mills,
Chairman, Committee on Telecommunications Policy.

Enclosure.

The Liberalizaton of Telecommunication Services—Needs and Limits

Report adopted by the Commission.

INTRODUCTION

Since its foundation in 1919, the International Chamber of Commerce has advocated and promoted the free flow of goods and capital. Furthermore, it has always supported a competitive market-oriented economy as the most appropriate system for creating greater prosperity throughout the world. Recently, the ICC has started considering the complex issue of liberalizing trade in services (banking, insurance, transport, etc.). It is therefore logical that our organization should address the problem of telecommunications, the importance of which os outlined in the following paragraphs.

(1) Today's environment is becoming increasingly complex, with greater interdependencies within and among nations, leading to a more integrated international society, In this environment, information has emerged as a key resource—critical to improving productivity and living standards, and an essential factor in national and international trade and commerce and further economic growth. Many countries, now moving toward information-based economies, are now at a crucial policy junc-

ture with respect to bringing the full benefits of information handling technology to their economies and tc the public.

(2) Information has little value if it is not used. On the contrary, in most cases the more it is used, the more its value increases. Therefore, access to information is crucial to the growth of all national economies. Telecommunications is a critical means of gaining this access. It is generally expected that the dynamic technologies which are at the heart of both information processing and telecommunications will continue, during the next decade, to develop in their function and cost improvement at a rate comparable to that of recent years. The application of the improvements promised by these technologies will provide new solutions to information handling problems and new benefits to users, and will result in greater demands for information processing products and services using telecommunications. The increasing utilization of telecommunications will be accompanied by a growing interest on the part of the user in the way in which these services are provided and regulated.

There are a number of obstacles, however, to the optimum use of telecommunications and there is a varying awareness of this problem. users and manufacturers have become increasingly conscious of the need to remove such obstacles; the growing realization of the importance of these issues has led to public discussion on a national and international level. Governmental authorities and telecommunications agencies are participating in this discussion in order to define the evolving environment in which all have legitimate interests and seek to attain legitimate ends. The ICC would therefore like to contribute its views toward an international policy direction, promoting the direct interest of international trade and business, and of telecommunication users in general. The ICC recognizes that developing countries have special circumstances and special needs. It is essential that the telecommunciation industry, telecommunication agencies and users take note of these needs and extent their cooperation to the developing world.

I. THE TELECOMMUNICATION ENVIRONMENT

(A) General considerations

1. Evolution.—As in many other industries, telecommunications from its beginnings in the 19th century has had an exponential growth. It has virtually leapt forward in recent decades.

Factors which have influenced the development of telecommunications over the years include:

Governmental control of basic transmission services provided by telegraphy, telephony and radio communication networks. This control is derived from the national communication laws and varies from country to country; from governmental bodies having only a regualatory power, to telecommunication agencies (PTT or other) having a full monopoly to regulate and operate telecommunications in the whole or a part of the country.

Establishment of recommendations and standards by intergovernmental organizations, such as CCITT, which cover mainly the international interconnection of country networks.

Technical inventions such as automatic exchanges, submarine cables, telephone, radio, the transistor, computers, microwave transmission, satellites, and fibre optic transmission.

Competition among entities in the same country or in different countries to satisfy the users' needs.

It is significant to note that, in several countries, many of the major steps in the development and utilization of telecommunications were stimulated by users' demands and innovative responses by manufacturers. For example: The use of punched paper tapes for store and forward telegraphy; the discovery and use of decametric waves by "radio amateurs" in the 1930's; the demand for automatic private exchanges for voice communication within an enterprise; the implementation of data transmission.

Starting in the 1960's, terminal equipment became increasingly sophisticated due to the emergence of remote information processing applications, where one party at the end of a telecommunication line was not a human but a computer. These applications were developed when users found that the basic telegraph and telephone networks could carry data by using appropriate modems or adapters. The users convinced the telecommunication agencies to allow them to utilize the networks to implement such systems. At the end of the '60's, telecommunication agencies started to realize that information growth could result in the saturation of the switched telephone network and in view of the latter;s techincal limitations, embarked on the planning and implementation of public data networks.

The telecommunication agencies' increasing use of computers in providing telecommunication services over the last decade has led some of these agencies to take into consideration the addition of information processing functions to the network, thereby offering enhanced services which compete with many alternatives commerically available elsewhere. However, in many cases, competitive entities are not permitted to utilize basic telecommunication services to offer alternative enhanced services to users. Further, in many cases, users themselves may be restricted in developing their own enhanced services and hence, be unable to fulfil their needs. This creates a policy problem in determining the conditions under which telecommunication agencies should offer enhanced services and the extent to which others may develop such services.

2. *Performance.*Telecommunciation services, in general, provide high availability and reliability to the users. This is to the credit of the telecommunication agencies which have invested massive amounts of money in automating, improving and extending their networks and in diversifying their basic service offerings. In doing so these agencies have been responsive to their users' requirements for basic telecommunications.

Undoubtedly, the most significant new utilization of basic transmission services has been for data transmission. In the last two decades, a variety of terminals has been introduced into the marketplace through competitive development. This high diversity, which was not the case for customer premises products in the past, is due to several factors:

whereas telegraphy and telephony are unique applications with homogeneous terminals, data communication must support a great variety of applications. Terminals must be tailored to applications and the industry class (e.g. banking, retail, airlines)

the user today is concerned not only with reliability, availability and price/performance but also with such things as: ease of use, expansion capability, adapability to his varying requirements and flexibility to use the same device for more than one purpose

terminals have benefited from the very high pace of technological innovation in data processing. Obsolescence occurs at a rate unknown in the traditional public telecommunication services.

The competitive environment in which these terminals were introduced permitted manufacturers to capitalize on these factors and to satisfy user requirements. In turn, the growth in the number and variety of terminals has had a synergistic effect and has stimulated the demand for telecommunication services.

(B) Procurement practices

In many countries it is a common practices for telecommunication agencies to procure their network equipment or the customer premises equipment they provide from national manufacturers, or affiliates, where they exist. It is of interest to note that the GATT code on government procurement adopted at the end of the Tokyo Round does not include the telecommunication sector.

Development of new telecommunication product for a telecommunication agency implies in most cases participation or even a leading role by the telecommunication agency. Most national manufacturers, in addition to supplying their national agency(ies), are striving for export, and in this regard, free trade should be an important factor. In many cases, however, access to foreign markets is achieved through foreign subsidiaries with local manufacturing capability; in some countries local manufacture is mandatory. Especially in cases where local manufacturing capability is non-existent (e.g. developing countries), there may be government involvement in import/export contracts.

(C) Attachment practices

All telecommunication regulations issued by regulatory bodies or by the agencies themselves (in cases of government monopoly) have provisions covering attachment of products to the networks. These are often referred to as: "homologation" procedures.

The degree of stringency of these procedures varies from country to country and from agency to agency. On the one extreme there are agencies that have included in their monopoly all equipment directly attached to their networks (such as PBXs and modems) and that require homologation of all other products which must be attached through the agencies' equipment. On the other extreme there is an agency that approves equipment for attachment through a simple process of accepting self-certification by the manufacturer that his product meets specific safety and technical standards.

The purpose of the "homologation" process should be to ensure the safety and integrity of the network. Other criteria should be left to the market place. Nevertheless, one can find cases where other considerations have gone beyond this purpose, for instance, requirements that relate to the performance of the product (other than harm to the network), product specifications (e.g. storage capacity) that relate to terminal utilization but not to communication requirements, and conditions for reciprocity with other countries.

(D) Tariff practices

Establishment of tariffs for a given telecommunication service is a regulatory power. It is exercised, under government control, either by the regulatory body when it exists or by the telecommunication agency when such agency has a full monopoly on operations and regulations. A common objective in the establishment of tariffs is the avoidance of discrimination against any class of users.

Within a given basic telecommunication service, cross subsidizing between various users is an accepted practice; e.g. the installation charge for a user remotely located is normally the same as for a user located near the central exchange. However, cross subsidizing between various services is a matter of debate. In some specific cases, service costs are clearly identified, but, in general, unavailability of relevant cost figures does not permit clarification of the existence and degree of cross subsidization.

II. INTERACTION OF TECHNOLOGICAL PROGRESS AND TELECOMMUNICATION POLICY

1. The opportunity to derive maximum benefit from new technologies in an information-based society is likely to be dependent on the convergence of existing transmission systems into an integrated digital network (IDN). This requires enormous capital investment at the R & D stage as well as in the phase of commerical production and application. On the other hand, new technologies may engender unusally high productivity effects beyond the telecommunication sector itself. This process is closely linked to the overall need for structural adjustment.

Promoting or restricting the development of new technologies has, therefore, profound social and economic effects at both national and international levels. In view of the direct and indirect repercussions of new technologies beyond the telecommunication sector, reevaluation of telecommunication policy is more important than it has ever been before.

2. The promises inherent in these terchnological trends and developments indicate a further evolution of the telecommunication industry and of telecommunication services, matching the needs of increasingly information-based economies. It is, we believe, an appropriate time to reevaluate the adequacy of telecommunication policies to take advantage of the foreseen opportunities. The challenge before us is: how can we maximize user benefits arising from these changes while still recognizing the legitimate needs for governments to achieve their social, political and economic goals? Neither a totally liberalized telecommunication environment, nor all-embracing government control or monopoly is likely to supply the answer to this question. It should be kept in mind when considering liberalization that it is the service received by the user that is of prime interest. This is the case now, as data, text and facsimile services can be offered over either public telephone networks or public data networks, and it will be more so in the future as Integrated Services Digital Networks[1] evolve.

III. CONCEPT OF A LIBERALIZED ENVIRONMENT FOR ENHANCED SERVICES AND TELECOMMUNICATION PRODUCTS

Telecommunication agencies have had, for many years, a monopoly franchise to provide telecommunication services. These include telex, public switched telephone and leased circuit services., and, more recently, public data network services. The ICC is not advocating any change in the manner in which these traditional telecommunication services[2] are provided, with one exception—the provision of customer premises equipment attached to these services (a desirable liberalization in attachment policy is discussed below). It is recognized that in some countries it is government policy to allow competition within the traditional telecommunication services. Such a step is not being addressed here by the ICC.[3]

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[1] See Appendix.

[2] Each country will have to define for itself the extent of telecommunication services which should be provided solely under government franchise. One major country has defined this boundary for its environment and this definition (Basic Transmission Services) is given in the appendix as an example. It is expected that definitions for the same boundary in the various countries may vary to some extent according to their environments.

The ICC agrees that the provision of traditional telecommunication services has significant social value and making them available at reasonable cost to every possible user is a desirable policy goal. Governments have every right to view their telecommunication infrastructure as a key national resource in achieving their national objectives. The continued improvement of this infrastructure, incorporating the latest technologies, should be given a high priority. The increasingly important role that telecommunications plays in both the social and the enconomic development of a country makes sound national policies regarding telecommunications imperative. The boundary line between monopoly and competitive services is a key element in establishing such policies.

From an economic point of view, the boundary line between monopoly and competitive services should provide for monopoly protection where natural monopoly[4] characteristics are evident while maximizing the area for competitive innovation. If one of the elements of telecommunication policy is to spur economic development, that policy should provide a relatively permanent and workable boundary line for the orderly development of the industry. The boundary should therefore not be based on technology, since we have seen it is subject to dynamic change. Nor should it be based on the type of information handled by a service, since as ISDNs evolve, all types of information handled indiscriminately.

Telecommunication products and enhanced services, those which provide function beyond traditional telecommunications, have been demonstrated not to have natural monopoly characteristics and therefore fall logically in the competitive sector. a boundary based on this premise is independent of technology and the type of information handled. It is a permanent boundary with a sound economic basis. Each country, however, must balance its economic and social goals in determining its telecommunication policy. Even though a particular enhanced service lends itself to effective competition with public benefit, and country may deem that it is in the national interest, or may desire for social goals, to subject in a particular case such a service to the telecommunication monopoly. Such exception to the exonomic basis should be clearly identified and acknowledged. In addition, there may be instances where, in the interest of the users, products and services beyond the natural monopoly boundary may be required to conform to minimal interconnection standards to ensure sufficient compatibility of subscriber terminal equipment with public network requirements. Justification for such requirements should be based on the use of international standards.

The ICC believes that liberalization in the provision of telecommunication products and enhanced services is desirable if not indispensable, subject to the appropriate compatibility as stated above. Users should be free to use, as they wish, underlying telecommunication service capability for any legitimate purpose, subject only to those requirements necessary to prevent harm to the network. It has been demonstrated that obstacles of different types existing in various countries do not allow full liberalization in the proper sense of this word.

The following four issues present a concept of liberalization which it is envisioned will benefit the users, the telecommunication agencies, the information handling industry and the public in general.

ISSUE I

Would a broad variety of enhanced services and telecommunication products best serve users?

Utilization of enhanced services and telecommunication products will continue to increase as part of the overall information handling function. A wide variety of enhanced services can be envisioned: electronic document distribution services including message preparation and mailbox facilities; network services including distributed systems management and protocol conversion to enable communication between incompatible terminals; information retrieval services including videotex data bases; and remote computing services including time sharing and custom programming. In allowing a multiplicity of these services and products, primary consideration should be given to users' diverse needs; the users' choice should not be inhibited by artifical constraints. Since their application requirements can vary greatly in terms of expected return, information volume, traffic pattern, performance, response time, type of processing required, computer/terminal interfaces . . ., users are best served by a large menu of offerings both in enhanced services and telecommunication products.

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[3] The relative ease of deploying satellite earth stations, might provide, however, the basis for a more flexibile approach to the use or licensing of facilities associated with such services.

[4] "Natural monopoly" is an economic concept. By "natural monopoly" is meant the "type of business which, because of its inherent technical characteristics rather than by virtue of any legal restrictions or financial power, cannot be operated with efficiency and economy unless it enjoys a monopoly of its market." J. Bonbright, Principles of Utilities Rates, pg. 11 (1961).

Universal and equal access to telecommunication services at cost-related prices will allow new entities providing enhanced services to compete equitably in the marketplace. It will also result in more efficient utilization of a nation's telecommunication resources, since use of the underlying telecommunication services will be increased.

ISSUE II

Would a competitive environment be most suitable for providing users this choice of alternatives?

As discussed in the environment section of this document, the high degree of competition that exists in the data terminal area has been highly beneficial to users. It provides them with the broad diversity of equipment they require. Manufacturers are motivated to innovate and to introduce products as quickly as possible in the marketplace. Competition lays the basis for truly cost-related prices of marketed products at the lowest achievable level. There is no reason to believe that this incentive would diminish in the future.

In the same way, would not a competitive environment be the best approach to achieve the goal of ensuring that the most diverse and lowest cost telecommunication products and enhanced services be available to the public?

Such an environment would also be beneficial to the telecommunication agencies as it generates additional utilization of their networks, bringing additional revenue to them.

ISSUE III

Would the desired environment be best created by liberalizing both the provision of all customer premises equipment and the provision of enhanced services?

Users of all products and enhanced services can benefit from liberalization, with effective competition among many suppliers.

In most countries, information processing capability is available from a number of commercial suppliers. These alternatives may be offered in the form of performing a variety of applications for many users, or in the form of products installed at a user's location performing similar functions for a specific user. Examples of such functions are protocol conversion and information retrieval.

Customer premises equipment, including data terminal equipment and data circuit terminating equipment for analog services (modems), is not normally manufactured by the telecommunication agencies. Thus, the provision of such equipment is easily separated from the provision of telecommunication services. In most countries, there are competing suppliers, especially for data terminal equipment, and users have been experiencing significant price, performance and functional advantages as a result of the competition.

Interfaces should be designed to be as simple as possible and should be based on international recommendations and standards to the extent possible. It is recognized that clearly defined interfaces must be established in each country between customer premises equipment and the telecommunication agency service to enable effective communications to take place. Such interfaces should be defined by a nationally recognized agency in cooperation with the telecommunication agency, users, equipment manufacturers and other interested parties. It has been demonstrated that conformance to such specifications can be successfully administered through self-certification by manufacturers, or certification by independent testing organizations, without damaging network integrity.

ISSUE IV

Should the telecommunication agencies be allowed to offer customer premises equipment or enhanced services?

Telecommunication agencies may be allowed to offer customer premises equipment and enhanced services if economic or political reasons call for such participation. This participation should take place on a fair and open competitive basis and be subject to safeguards to protect users of the agencies' traditional telecommunication services from bearing the costs of the competitive ventures. Such safeguards presume a defined boundary between traditional agency telecommunication services offered under monopoly protection, and all other services and products offered on a competitive basis. Accounting procedures should be specified for the separation of costs and revenues between services offered on a monoploy basis and services and products offered on a competitive basis. Governments may choose to supplement accounting safeguards with organizational changes designed to separate the competitive offerings from the monopoly services. Organizational separation reduces the demands on accounting safeguards by creating an easily recognizable boundary across which transactions can be monitored and by reducing the number of shared activities for which expenses must be allocated. In addition, all agencies providing enhanced services should procure their underlying transmission at tariffed rates and all enhanced features should be priced separately from underlying service, as user options.

The ICC does not pretend to have exhausted the subject matter of this report; nevertheless, the ICC believes that its contribution can add to the understanding of the need for consultation among all interested parties. To achieve a meaningful result, the ICC recommends that a dialogue be established among the telecommunication agencies, users and users' associations, and manufacturers and manufacturers' associations on a permanent basis. Such fora would enable the agencies to present their plans, the users to voice their needs, and the manufacturers to give their technical and economic assessment, thus permitting a concerted action to be planned and developed, including the establishment of appropriate norms and standards.

BACKGROUND INFORMATION

ISO—International Organization for Standardization

ISO is an organization of national standards bodies and liaison members promoting the development of standards both to facilitate the international exchange of goods and services and to develop mutual cooperation in the spheres of intellectual, scientific, technological and economic activity.

IEC—International Electrotechnical Commission

IEC is an international organization responsible for the preparation of international standards for the electrical and electronic fields. Together with its sister-organization, ISO, IEC forms the system for international standardization as a whole. IEC is composed of national committees representing over 40 national electrotechnical standards organizations.

CCITT—International Telegraph and Telephone Consultative Committee

CCITT is an international organization, part of the ITU (International Telecommunication Union), a specialized agency of the United Nations.

CCITT members are: ITU Members (the PTT in many countries); Recognized Private Operating Agencies (e.g., AT&T in the U.S.); International organizations (e.g., ISO, IATA, INTUG); Specialized agencies of the UN (e.g., WMO); Scientific or industrial organizations in an advisory capacity.

CCITT produces recommendations of a technical as well as an administrative or tariff nature which further international telecommunications.

ISDN—Integrated Services Digital Network

ISDN is generally viewed as an evolutionary development resulting from the increased use of digital technology within existing telephone networks, with the local loop expected to be the last link to be converted. As networks evolve to the stage where digital transmission and switching are employed end-to-end, they are referred to as Integrated Digital Networks (IDN). Such networks will then evolve into Integrated Services Digital Networks (ISDN) providing transmission service for all types of information, including digitized voice, data, text and image. Thus, ISDN is not a new and separate network but, rather, the result of increasing use of digital technology in circuit switched telephone networks. It is also generally agreed that not all future services can be foreseen and that the interfaces should be defined with maximum flexibility to allow access both to a menu of basic transmission services and to new services as they are defined.

Basic transmission services

Basic transmission services are voice and non-voice services, available to all members of the public, consisting exclusively of the transmission (including switching when required) of information of the user's choosing, between points specified by the user, in which the information delivered by the telecommunication agency to the addressee is identical in form and content to the information received by the agency from the user. The word "information" is used here to mean the intelligence transmitted for the user, excluding address information that is used for the purpose of achieving connectivity (switching). Network storage in support of a basic transmission service is used only to the extent necessary to facilitate timely delivery of information to the addressee. A service which operates on or takes programmed actions based on the user's information in order to control its delivery or routing would not be considered as "basic".

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 25, 1982.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your May 14, 1982, letter requested our comments on S. 2469. This legislation would direct the Federal Communications Commission to deregulate and promote competition within the international telecommunications market and would create a task force to coordinate U.S. international telecommunications policy.

We generally support the concept of increased competition and decreased regulation for nondominant providers of international services and facilities. Consideration of S. 2469 will offer your committee a good opportunity to examine how increased competition and further deregulation could benefit the international telecommunications market. Further, we believe that the important role telecommunications plays in U.S. trade policy, national security, and foreign relations make effective cooperation and coordination among Federal agencies absolutely necessary. Title II of S. 2469 offers a means of facilitating such cooperation and coordination. However, we believe that in some instances S. 2469 restricts the Commission's authority to effectively regulate dominant providers of international facilities and services and gives the Commission too much authority to settle trade disputes involving such facilities and services. In this light we offer suggestions for modifying the proposed bill.

COMPETITION AND DEREGULATON

In our report entitled "Legislative and Regulatory Actions Needed to Deal With a Changing Domestic Telecommunication Industry," (CED-81-136, Sept. 24, 1981), we stated that deregulating carriers that do not have market power (nondominant carriers) is an appropriate regulatory approach which would reduce the costs of regulation for those carriers and society as a whole. We recommended to Congress that Title I of the Communications Act be amended to direct the Commission to rely on competition and the private sector to the maximum extent possible to achieve the overall goals of the act. Although our report and recommendation were directed at the domestic telecommunications market, we believe that the conclusion and recommendation apply to the international market as well. Title I of S. 2469 provides the direction we recommended by authorizing the Commission to forbear from regulating international telecommunication services as adequate competition develops.

COMMISSION AUTHORITY

We believe that subsection 606(a) is too broad in removing regulatory powers of the Commission. This subsection states that the Commission shall revise, reduce, or eliminate regulations regarding international telecommunications as competition develops unless such action may result in a significant adverse impact on national security or defense, emergency preparedness, or upon the economic competitiveness and viability of U.S. suppliers of telecommunications equipment and services relative to competing foreign suppliers. We believe this section should make clear that the Commission shall continue to regulate if revision, reduction, or elimination of regulation would result in decreased competition among U.S. suppliers of telecommunications equipment and services.

Subsection 606(f) would authorize the Secretary of Commerce to collect information on the competitiveness of U.S. suppliers of telecommunications services and equipment. The Commission would need such information to classify or reclassify services as regulated under subsection 607(b). Because the Commission has a specific need for such information, we believe that the Commission and not the Department of Commerce should gather information on competitiveness of the international telecommunications market.

CLASSIFICATION OF CARRIERS AND SERVICES

Subsection 607(b) would give the Commission the authority to classify or reclassify as a regulated service any services or facilities when it determines that such services are not subject to effective competition, that regulation is needed to accomplish the purposes of the legislation, and that benefits of such regulation outweigh the costs. Subsection 607(b)(2) provides criteria the Commission would consider in making such a determination.

We agree that these criteria are essential to measure competitiveness in providing any services or facilities. We believe, however, that to enable the Commission to effectively make such a measurement, it needs an ongoing capability to analyze market and industry structure. In our September 1981 report we recommended that the Commission establish an industry analysis group. This group's analysis would provide a framework for future Commission decisions for regulating dominant and nondominant carriers in light of changing market conditions and would enable the Commission to measure the effectiveness of its policies designed to foster and encourage competition. Such action should also enable the Commission to meet the requirements set forth in subsections 607(a), (b), and (c). We recommend that your committee include in S. 2469 provisions to direct the Commission to establish an industry analysis group.

TARIFFS

Section 613 would provide an expedited procedure for approving filed tariffs. We recognize the bill's intent to facilitate the often burdensome procedure of tariff approval, but we are concerned that the provisions of section 613 may reduce the Commission's flexibility in dealing with filed tariffs, particularly in tariffs filed by dominant carriers.

Section 613 is similar to subsection 210(b) of S. 898, which would allow regulated, nondominant carriers to file for a tariff under expedited procedures. However, subsection 210(b) of S. 898 also includes tariff provisions somewhat comparable to those presently contained in Title II of the Communications Act of 1934, which the Commission could employ in evaluating tariffs filed by dominant carriers.

We are concerned that section 613's apparent elimination of certain tools which the Commission can employ as part of its tariff review process may reduce the Commission's ability to determine whether the rates filed by carriers, particularly dominant carriers, are just and reasonable. In our September 1981 report on the Commission's regulation of domestic common carriers, we recommended expanding the Commission's authority to allow it to prescribe interim tariffs.

We found that increased competition created a potential for cross subsidy as carriers would have incentives to subsidized the costs of one service through the profits of another service. The Commission has the authority to prescribe a tariff—if it believes the filed tariff is too low—but has not used this authority because it believed past tariff hearings had not produced understandable cost data on which a prescription could be based. However, the Commission has experienced difficulty in obtaining adequate cost data without a prescription.

To resolve this problem, we recommended to the Congress that the Communications Act be amended to give the Commission authority to prescribe an interim tariff based on the cost data which a carrier submits in support of its tariff. The interim tariff would go into effect at the end of any suspension period the Commission might designate. The interim tariff should have a limited life span. During this time the Commission would hold a hearing and—based on data presented at the hearing—prescribe a permanent tariff. We believe this recommendation would also help to protect against potential cross subsidy in international telecommunication services.

EQUITABLE MARKET ACCESS

Section 624 would give the Commission authority to establish policies for the entry of foreign carriers into the U.S. telecommunications market under terms which are comparable to those for U.S. entry into the market of the foreign nation in which the carrier is based.

We suggest that consideration be given to deleting this section because it is inconsistent with the current administrative structure for handling trade disputes, and it runs counter to the generalized approach the United States has taken regarding international trade disputes. The President currently has broad discretionary authority to act to resolve trade disputes. The President, supported by the executive agencies, considers the narrow issues specific to any dispute, as well as the broader economic, political, and foreign policy interests of the United States. Furthermore, the President has, at his disposal, a wide range of options to choose from when taking retaliatory action, thus improving the chances of success. Section 624 would place the authority to resolve the disputes in one trade sector with an independent commission that may or may not address all the broader concerns and that would have available to it a limited range of retaliatory options.

The approach proposed by section 624 would also tend to undermine continuing efforts by the United States to strengthen the multilateral framework for international trade through which the United States has furthered its trade and economic interests. Multilateral international trade agreements have created a set of fair trading rules for exporting and importing goods. However, the system has not been clearly extended to include services. It would be desirable to find an approach to solving telecommunications services trade problems that is consistent with the existing multilateral approach to resolving trade disputes.

We suggest that a possible alternative to section 624 would be to direct the President to actively seek to extend the current multilateral agreements covering unfair trade practices to explicitly include trade in services, such as international telecommunications. The Congress may wish to add a reporting requirement to monitor the progress being made.

COORDINATION

Title II of S. 2469 would establish an International Telecommunications and Information Task Force. The task force would be the principal coordinating body for developing U.S. telecommunications and information policies. We generally endorse the need for coordination among Federal agencies for policy development.

In our report entitled "The Federal Communications Commission's International Telecommunications Activities," (CED-82-77, Apr. 19, 1982), we stated that in several facilities authorization proceedings over the last few years, the Commission has had to go beyond its traditional areas of expertise to consider foreign affairs, national security, and U.S. trade policy. In these proceedings the Commission coordinated with executive branch agencies with responsibilities in these areas, such as the Departments of State, Defense, and Commerce and the Office of the U.S. Trade Representative. However, no formal process exists for coordinating with these agencies. The Commission, an independent regulatory agency, is not required to coordinate with executive branch agencies on most matters.

Telecommunications policy development within the executive branch is addressed by Executive Order No. 12046, which assigned telecommunications functions to various executive branch agencies including the Departments of State and Commerce. However, the role played by each agency is still unclear. For example, under the executive order the Secretary of Commerce is responsible for coordinating the telecommunications activities of the executive branch. However, in July 1981, the Department of State created an interdepartmental group, chaired by the Under Secretary of State for Security Assistance, Science, and Technology, to coordinate U.S. policy for international communications and information issues. The Assistant Secretary of Commerce for Communications and Information told us he would like to see Executive Order No. 12046 rewritten to clarify the role of executive branch agencies in these policy areas.

POWERS OF THE TASK FORCE

In our opinion, the wording of subsection 204(a)(1), which sets forth the power of the International Telecommunications and Information Task Force, may be construed in such a manner as to adversely affect the independence of the Commission in rulemaking and adjudicatory functions. This subsection could be construed to require the Commission to coordinate its decisions and orders with the task force prior to their issuance. Such a requirement would make the Commission appear to be dependent upon administration guidance in making its administrative determinations, rather than appearing to be an independent body. This could erode public confidence in the Commission's objectivity. We do not believe this construction was intended by the drafters, who apparently meant that only nonrulemaking and nonadjudicatory policies should be subject to coordination. If this result was intended, we recommend that the provision contained in subsection 204(b) be amended to also exclude subsection (a)(1) as well as (a)(2) as follows: "(b) The provisions of subsection (a)(1) and (a)(2) shall not apply * * *."

TRANSFER OF FUNCTIONS

Subsection 205(c) would transfer to the task force those functions of the Director of the International Communication Agency (ICA) specified in section 6 of Executive Order No. 12048 of March 27, 1978, to the extent that its provisions related to responsibility for advising the President.

Section 6 of the Executive Order explicitly notes that the scope of the ICA Director's advice shall include assessments of the impact of actual and proposed U.S. foreign policy decisions on public opinion abroad.

Because the Director of ICA is in a unique position within the Government to provide this advice to the President, it is questionable whether this function would be better served if the assessments are filtered through the task force.

MISCELLANEOUS PROVISIONS

Section 303 requires the Department of Commerce to analyze and quantify the effect of any significant rule or order of the Commission on international competition and on the viability of the U.S. telecommunications industry. We believe that such information would be of interest but would offer little assistance to the Commission in reaching a decision since such analysis would occur after the decision has been reached.

If Commerce were required to provide such analysis, its results should be provided to the Commission while the Commission is considering comments on proposed rule changes from other interested parties. This analysis might also be submitted to the proposed task force for comments.

In conclusion, we believe that the major features of the bill—deregulation, promoting increased competition, and interagency coordination—will enhance the U.S role in international telecommunications. We beleive that our suggestions will improve the Commission's ability to effectively regulate dominant providers of services and facilities without restricting further deregulation of competitive services and carriers. We welcome working with your committee in its deliberation on this important legislation.

Sincerely yours,

CHARLES A. BOWSHER,
Comptroller General of the United States.

CONGRESS OF THE UNITED STATES,
OFFICE OF TECHNOLOGY ASSESSMENT,
Washington, D.C., June 28, 1982.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed please find OTA's comments on S. 2469 as requested by your letter of May 14.

In asking my staff to prepare this memorandum, I requested that our effects be coordinated with the Community and Economic Development Division of GAO. That coordination has proved quite successful and therefore our comments should be viewed as complementary to those you receive from GAO.

Thank you for the opportunity to comment upon the important legislation.

Sincerely,

JOHN H. GIBBONS.

Attachment.

STAFF MEMORANDUM PREPARED BY THE OTA COMMUNICATION AND INFORMATION TECHNOLOGIES PROGRAM, JUNE 28, 1982

As you know, OTA has been in close contact with GAO on this subject. Numerous telephone calls and several meetings have allowed me to conclude that our two agencies have very similar comments with respect to this legislation, although ours are somewhat more broadly stated than GAO's. The comments presented below are only those which OTA emphasized in our encounters. OTA would endorse GAO's comments and our comments have the informal endorsement of the GAO staff.

OTA's comments are divided into four areas: (1) general reflections on the goals of the legislation, (2) economic dislocations, (3) foreign policy considerations and (4) resource allocation at the Federal Communications Commission.

GENERAL REFLECTION ON THE GOALS OF THE LEGISLATION

The overall emphasis of the legislation is one of introducing a more competitive environment into international telecommunications. One could not find any area of telecommunications today operating under more constrained and artifical conditions than the international community. The opportunities for technological advancement and economic benefit are very large and could be achieved faster and to a greater degree under competitive market conditions.

The legislation also presents a needed opportunity to discuss many of the issues in international telecommunications that have languished for lack of public attention. We are particularly encouraged in this regard as the legislation addresses several of the problems discussed in OTA's report, "Radiofrequency Use and Management."

ECONOMIC DISLOCATIONS

An area of concern regarding the legislation is the potential for short-term economic dislocations for some of the participants in the international market. There are several considerations within this context; the first is the transition from a regulated to a competitive pricing structure. Historically, tariffs for international services have been based, in large part, upon the FCC's deliberate compartmentalization of facilities among carriers. Such compartmentalization has enabled orderly growth in both cable and satellite facilities but has exacted a toll in terms of economic efficiency. Some facilities investments, particularly in cable, may not have been chosen by the carriers except for the existence of an artificial pricing structure (based on 50/50 proportional fill requirements) which enabled recovery of these more costly investments. Under more competitive conditions, such a pricing structure may fall away leaving some carriers with unrecovered and perhaps, unrecoverable facilities investments.

A second consideration is that economic dislocations may also arise from the greater participation of the dominant carriers; AT&T and Comsat. AT&T currently provides all switched voice services in the international market, which account for roughly two-thirds of the total market. The remainder of the market is composed of record (telex) and data communication. Under conditions of open competition, AT&T should find it relatively easy to enter the telex portion of the market, heretofore the exclusive domain of the International Record Carriers (IRCs), while the IRCs are not likely to find entering the voice market a simple matter. AT&T has the experience, the facilities and the well-established relationships with foreign entities to support an entry into the provision of telex service. The IRCs, on the other hand, lack many of those qualities with regard to voice service. In addition, their potential for making the financial investment in facilities required to provide voice service is limited.

The entry of Comsat into the retail market for international service presents problems for the IRCs and perhaps even AT&T. Comsat's current status as a carrier's carrier could easily be converted into a significant competitive advantage if its previously-wholesale prices were now made available to end users. the IRCs, as resellers not owners of satelite capacity, would not likely be in a position to adequately compete. Further, to the extent that satellite facilities are cheaper than comparable cable facilities, Comsat may quickly make significant inroads into AT&T's cable-based market share causing some short-term revenue disruption for the latter.

Rapid and numerous entry into the international market by new carriers may also cause some economic dislocations as such entry will continue to be matched only by limited and almost exclusively government entry on the part of the foreign participants. Foreign governments have not often been faced with the task of choosing among many carriers and it remains to be seen how they will make the financial and other determinations needed for such choices. Also if new U.S. entry is unprotected by FCC approval of new carrier status, cooperation with foreign entities may be made more difficult. The authorized carrier status conferred by the FCC is probably of great value to a carrier's negotiations with foreign entities. Should the FCC no longer control market entry, a competitive advantage over future participants could be had by existing carriers in this regard.

FOREIGN POLICY CONSIDERATIONS

The potential for economic dislocations contains the consequent potential for foreign policy concerns. Any change in international market activities will have concomitant effects on the foreign partners in international transmission. In most cases, the foreign partners are governments rather than private businesses and thus changes in the economic character of the international market must be viewed from a different perspective. The possibility of having controversies in this area spilling over into other areas of U.S. relations with a foreign government must be considered. For example, the legislation's sectoral reciprocity provisions may injure long-negotiated trade relationships in other product areas.

Another foreign policy consideration can be found in the possible elimination of the existing structure of rate averaging. Recovery of communications facilities investment is dependent, in part, on the frequency of use. The North Atlantic corridor currently carries much more traffic than, for example, does the corridor between the U.S. and Africa. Rate averaging has kept the prices for higher-cost routes relatively low. Competition would threaten this subsidy and perhaps place U.S. relations with African and other countries at some disadvantage. As a corollary, State Department missions in more remote areas may experience significant rate increases.

An improvement in the U.S. foreign policy-making mechanism may be found in the legislation's relaxation of the facilities construction authorization and utilization procedures. These procedures have often caused significant delays in the building and utilization of facilities. Since these facilities are most often half-owned by foreign governments, such delays occasionally have not been of benefit to U.S. relations with some foreign governments.

FEDERAL COMMUNICATIONS COMMISSION RESOURCE ALLOCATION

A major implication of the legislation appears to be the increased burden presented to the FCC. One example can be found in the legislative requirement to institute rate base regulation for international services that will continue to be regulated. Such a task has never been performed in the international market before and is likely to be quite ardous and time consuming. It is not clear that the FCC has the expertise or will be able to obtain the needed resources in the short time frame allowed by the legislation.

Another example of the increased burden the FCC can expect is in the requirement that it determine when "effective competition" exists in order to effect deregulation. With the history of artificially imposed market mechanisms having allowed some carriers to profitably participate where they otherwise may not have, the task of determining the existence of "effective competition" should prove most difficult. Again, it is not clear that the FCC has or could obtain the resources needed to pursue this task.

COMMUNICATIONS SATELLITE CORPORATION,
Washington, D.C., July 1, 1982.

Hon. BARRY M. GOLDWATER,
Chairman, Subcommittee on Communications, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I appreciated the opportunity to present COMSAT's views on S. 2469 and hope that my testimony will be helpful to you and your staff in your efforts to further develop and refine this legislation.

As you requested during the hearings, I am submitting an additional statement that describes COMSAT's views on the 1979 WARC and future ITU conferences. I applaud your efforts to increase your preparations for such meetings, which are of vital importance to the United States telecommunications industry.

Please be assured that COMSAT will assist you in any way we can.

Respectfully yours,

JOSEPH V. CHARYK.

Enclosure.

WARC '79 AND FUTURE ITU CONFERENCES

In my testimony (p. 11), I referred to the need to prepare for the new challenges facing this country in various international telecommunications fora, particularly within the ITU, and with regard to those issues surrounding allocation and use of frequency spectrum and the geostationary orbit. The importance of these issues and the enormous stakes for the future become increasingly evident as we consider and prepare for future ITU conferences.

I believe that a thorough examination is appropriate to assess how well the United States is equipped to address effectively the basic problems that are causing more and more controversy at meetings of the ITU, particularly the differences between the developed and developing countries over principles of spectrum management. I am glad to have the opportunity to elaborate on this point and to review briefly some of the important up-coming conferences that are of direct and continuing interest to COMSAT. The changing telecommunications environment, including the growing influence of the developing nations, can be expected to play a large role at these conferences.

Beginning in September of this year, the ITU Convention will be considered for modification at the 1982 Plenipotentiary Conference in Nairobi, Kenya. The Convention serves to guide international cooperation among the 155 member countries of the ITU for use of telecommunications of all kinds and governs the structure and functioning of the ITU itself. Therefore, changes in the Convention will be fundamental to future work and conferences of the ITU. For example, any change in Article 33 of the Convention concerning use of the spectrum and the geostationary satellite orbit would have a direct impact on the conduct of the World Administrative Radio Conference scheduled to plan Space Services using the geostationary orbit.

The Space Services WARC is scheduled to be held in two sessions. The first session in 1985 will define the type of planning and determine which services and which frequency bands should be planned. The second session in 1987 will do the actual planning. The Space Conference is of vital importance to commercial satellite planners and to government policymakers. Our ability to implement new technologies, offer new and expanding commercial services, and continue to provide economical communications via satellite in the years ahead depends, in part, upon the "rules" established at this conference.

The Broadcasting Satellite RARC for Region 2, scheduled to be held in June 1983 is also of prime interest to COMSAT. This conference will impact both the Broadcasting Satellite Service (BSS) and the Fixed Satellite Service (FSS). U.S. domestic issues regarding operation of direct broadcast satellites planned for operation in the 12 GHz band could be affected adversely by decisions at this conference. Also, this conference will decide the allocation of the band 12.1 to 12.3 GHz between the BSS and FSS that was left unresolved at the 1979 WARC.

The degree to which U.S. interests might be affected by these future conferences is not now clear. The U.S. approach to establishing principles to guide the use of the geostationary orbit differs from the approach advocated by many other countries, particularly developing countries that see a detailed a priori plan that assigns specific frequency channels and orbital positions to each country as a means to guarantee future access. This approach, at least in theory, would provide all nations with equitable access to the orbit and spectrum on a predetermined basis. The United States, on the other hand, has consistently favored a flexible planning approach that encourages use of the latest technology to engineer spectrum/orbit assignments as necessary to accommodate needs. These fundamentally different approaches may be reconciled or a satisfactory compromise may be reached before or during these conferences. However, it is not obvious that possible technical solutions will be acceptable. Unless we take new initiatives and find solutions to the non-technical, as well as the technical issues, it seems clear that acceptable compromises will be more difficult to reach at future conferences.

I support examination of new approaches to deal with the non-technical and technical issues and attempts to solve the problems at their source. This includes examination of means to package U.S. technology, economic strength, and know-how and ways to engage the developing countries in joint ventures to develop their domestic communication service needs. INTELSAT is a successful on-going venture that could be the vehicle for such an initiative. Any examination of such approaches should include consideration of the existing INTELSAT mechanism, and COMSAT stands ready to assist the Subcommittee in any such examination.

In conclusion, I would observe that while the Final Acts of the 1979 WARC are generally favorable to the Fixed Satellite Service, the issues of orbit planning—to be addressed at future conferences—make the future uncertain.

THE WESTERN UNION TELEGRAPH CO.,
Washington D.C., July 2, 1982.

Hon. BARRY M. GOLDWATER,
Chairman, Subcommittee on Communications, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Following enactment of the Record Communications Competition Act of 1981 Western Union filed an application with the Federal Communications Commission on March 19, 1982, seeking Section 214 authorization to acquire and operate facilities for the purpose of providing record communication services to six overseas points directly (Australia, Hong Kong, Italy, Peru, Singapore and the

United Kingdom) and to other overseas points on a transit basis. The international record carriers filed petitions urging the Commission to deny Western Union's application or to attach conditions to any grant of the application that would, among other things, further delay Western Union's entry into the international market, require Western Union to establish a separate subsidiary, and impose restrictions on Western Union's arrangements with overseas telecommunications authorities. Western Union filed an opposition to those petitions and demonstrated why our application should be granted without conditions. The pleading cycle was completed on May 17, 1982 and the application is now ripe for Commission action. Western Union is hopeful the Commission will act on and approve the application on or shortly after July 28, 1982, the date following the expiration of the 210 day moratorium prescribed by Section 222(c)(5), as amended by the RCCA.

To prepare itself for entry into the international record marketplace following the expiration of the moratorium, Western Union filed tariffs on May 12, 1982, with an effective date of August 10, 1982, offering international telex, telegram and private line services. Western Union's international telex tariff proposes rates that were substantially below the rates charged by the IRCs at the time the tariff was filed (for Western Union subscribers, the proposed end-to-end rates to all countries are approximately $0.50 per minute below the rates then charged by the IRCs, approximately a 20 percent reduction). Tariffs filed subsequently by the IRCs designed to meet our commitment to reduced rates have established a rate level at roughly .4¢ per minute below the Western Union rate level. If the Commission approves Western Union's Section 214 application prior to August 10, Western Union will request the Commission to advance the effective date of the tariffs, and if the Commission has not acted on Western Union's application by August 10, Western Union has indicated that it voluntarily will defer the effective date of the tariffs. The IRCs have filed petitions seeking rejection of the tariffs and Western Union has filed a reply demonstrating that the tariffs should be accepted for filing.

Immediately after enactment of the RCCA, the FCC issued a notice scheduling negotiating sessions among interested carriers. While the parties met on at least 10 occasions during the first 45 days, they were unable to reach agreement. Accordingly, on April 8, 1982 (ninety days after the first meeting) the FCC issued an Interim Order pursuant to amended § 222(c)(3) setting forth the terms and conditions of interconnection among the domestic and international record carriers and the interim divisions of revenues from interconnected traffic.

The Interim Order required the carriers to file tariffs, implementing the RCCA and the Interim Order, on April 13, April 28 and May 3, and the tariffs were to have become effective in mid-May. The FCC, at the request of the IRCs, granted extensions in the first two filing dates to April 30, and later extended the effective date of the tariffs to June 20.

In an order released on June 11, the FCC found that the IRCs' tariffs "in substantial respects violated the intent and the explicit language of the Interim Order", and Western Union's tariffs were found to generally comply with the Interim Order. The Commission ordered conforming tariffs to be refiled on June 16, and to become effective on June 20.

During April and May, the parties conducted negotiations under FCC supervision in an effort to resolve numerous technical issues that were not addressed in the April 8 Interim Order. These negotiations were largely successful. However, two issues remained unresolved and, on June 11, the FCC staff issued a Tentative Decision proposing a resolution of those issues. Comments on the Tentative Decision were filed June 25.

In the meantime, on June 20, domestic interconnection took effect, as did most of the new procedures for international interconnection. Certain provisions intended to assist new carriers in entering the international market were deferred by the Commission in order to give the Court of Appeals time to consider IRC stay motions.

Still pending before the FCC are requests for reconsideration of the April 8 Interim Order, the Tentative Decision on technical issues, and separate comments filed on whether IRCs should provide bearer circuits to carriers who lack operating agreements with overseas administrations. In addition, numerous court appeals have been lodged with respect to the April 8 Interim Order and the June 11 Tariff Order.

We have established an International Affairs (IA) organization with the primary function of obtaining and maintaining operating agreements with foreign administrations and recognized private operating agencies. The department is located in the company headquarters and the group has set up two liaison offices in London and Sydney. This type of office will be strategically placed around the world as required.

Since the RCCA was signed, we have met with many administrations around the world. Their reaction to connecting with another U.S. carrier has been varied. However, there is an underlying theme that there are already too many U.S. carriers and efficiency is being sacrificed by the open U.S. policy. The major example of opposition to additional U.S. carriers was in a CEPT recommendation requiring any member country considering connecting to another U.S carrier to discuss this with all other members before taking any action. Western Union, as a consequence of this CEPT recommendation, met with the CEPT "TG" working group. After this meeting, the CEPT countries were "set free" from the recommendation and could then discuss direct operating agreements with Western Union without further CEPT consultation. This was a major accomplishment in the company's bid for international service agreements.

This, of course, does not mean that all European countries will automatically agree to work directly with Western Union. The attached chart shows those countries with which Western Union has agreements to operate and those that have given a positive response but require further discussion before a firm agreement is reached.

In Europe, a major agreement was recently completed with the Federal Republic of Germany. Western Union and the Deutsche Bundespost not only agreed to jointly operate the basic services of telex, leased lines, etc., but agreed to start the first intercontinental teletex service in the fall of this year, assuming all governmental authorizations are received. Another country interested in teletex at this time is Sweden, with whom Western Union has had discussions.

Hong Kong, a major transiting point and a large terminal carrier in its own right, has been very responsive to Western Union's proposals. Consequently, Western Union has an excellent operating agreement with them, which should be beneficial to both parties. Western Union has had an initial visit to Japan which, we hope, will lead to further discussions and an operating agreement.

Western Union is proceeding to consolidate the signed and verbal agreements so that direct service can start as soon as possible and yesterday we filed a Section 214 application to provide direct service to Chile, Colombia, Philippines, Germany, Austria and Surinam.

Sincerely,

RICHARD L. CALLAGHAN,
Vice President, Government Relations.

STATUS OF SERVICE AGREEMENTS AS OF JUNE 14, 1982

Signed: Chile; Colombia; Peru; Hong Kong; Singapore; Philippines; Germany; United Kingdom; Italy; Austria; and Surinam.

Still under discussion: Australia; New Zealand; Comtelca—Costa Rica, Guatemala, El Salvador, Honduras, Nicaragua—Israel; India; Thailand.

[U.S. Government Memorandum]

JULY 22, 1982.

To: Chairman Fowler.
Reply to Attn of: Gary M. Epstein, Chief, Common Carrier Bureau.
Subject: Comments made about the Commission's Authorized User policy and its efforts to implement the Record Carrier Competition Act of 1981, made in testimony concerning S. 2469 on June 14 and 15, 1982.

In his testimony before the Subcommittee on Communications on June 14, 1982, Lieutenant General Hilsman indicated his concern that our current Authorized User policy restricts the Department of Defense's ability to lease satellite channels directly from Comsat. General Hilsman indicated that this policy increases DOD's communications costs.

The Authorized User policy has never constituted an absolute bar to DOD's directly leasing satellite facilities from Comsat. Pursuant to the Authorized User policy, Comsat acts as a carrier's carrier and routinely provides direct service only to other carriers. The Commission may grant a waiver of this policy to Comsat to lease facilities directly to DOD upon a showling of unique and exceptional national interest circumstances.

Furthermore, we are reviewing the Authorized User policy and one of the policy options under consideration is to permit Comsat to provide direct service to the government as an authorized user without any special showing. This item will come before the Commission in the near future.

General Hilsman refers to the difficulties in acquiring operating authority for two dedicated earth stations on military installations on Guam and Hawaii. In this particular case, the Commission granted Comsat a waiver to construct earth stations to directly provide the services required by DOD. It also initiated a full hearing before an Administrative Law Judge to assure that Comsat's tariffed rate to DOD would reflect the full cost of the facilities. Upon construction of the facilities, we granted temporary operating authority to Comsat to provide services to DOD pending the outcome of the hearing on the matter of compensatory rates. The rates prescribed by the Administrative Law Judge, prescribed a new higher rate that would cover the cost of the proposed service. However, DOD rejected these rates as too high and declined to accept service. Thus, the existing lack of service to DOD by Comsat through dedicated facilities between Guam and Hawaii is due to DOD's decision not to accept service at rates which an Administrative Law Judge found to be fully compensatory. It is unrelated to our Authorized User policy since operating authority was granted.

The testimony also contains several references to the implementation of the Record Carrier Competition Act of 1981 (RCCA). As you know, the carriers were unable to reach an agreement on interconnection arrangements within the 90 day period established by the Act. We therefore issued an Interim Order on the 90th day after the initial interconnection negotiating session, as required by the RCCA. The Interim Order required the carriers to file tariffs reflecting interconnection, discount, pro rata and transiting arrangements. Tariffs were filed by the carriers, rejected by the Commission and subsequently refiled by the carriers upon Commission prescription. At the present time a stay has been granted on the request of an international record carrier by the U.S. Court of Appeals for the District of Columbia to consider an IRC escrow proposal relating to the transiting and pro rata provisions.

The Commission committed substantial staff resources to assure the successful implementation of the RCCA's requirements within the short time provided for by the legislation. Yet, the Commission has been frustrated that, despite its efforts, the carriers chose to generally disregard and/or be non-compliant with requirements of the Interim Order.

Another carrier suggested that the Commission erred in not permitting the carriers to file informational tariffs. There would have been no benefit to this approach. The same problems would have arisen regarding technical, transiting and pro rata provisions. Most importantly, the resolution of these problems would not have been expedited and the actual result would have been to delay the implementation of the entire RCCA.

GARY M. EPSTEIN.

COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

MEMORANDUM

The major provisions under S. 2469, the "International Telecommunications Deregulation Act of 1982" which are related to positions or concerns with issues which CBEMA has considered in the past fall into three categories:

1. International shared use and resale;
2. Reciprocity;
3. A U.S. Government structure to develop U.S. International Telecommunications Policy.

1. International shared use and resale

Section 608 of the Bill entitled "Resale of Telecommunications Services" states as a general matter that neither resale nor shared use, which terms are defined in the bill, are subject to FCC regulation.

Under the 1977 FCC's Final Order in Docket 20097 "Shared Use and Resale of Private Lines", it ruled that customers obtaining private line services should be allowed to resell such services without restriction or undue discrimination. In this decision the Commission adopted policies permitting a broadened use of domestic U.S. communications services and facilities, ruling tariff restrictions on the resale and sharing of such services and facilities unlawful. Since about 1975, the FCC has considered removing the tariff restrictions which prevent U.S. users and carriers from sharing and reselling U.S. based international services. In early 1980, the FCC established a Notice of Proposed Rulemaking, Docket 80-176, to consider allowing resale and shared use of international leased, or private lines. this proceeding has drawn significant international controversy, especially from foreign P.T.T.s which are correspondents of AT&T and the U.S. International Record Carriers, IRCs.

In August 1980, CBEMA submitted comments to the Commission regarding this docket. In essence these comments, while noting the Commission's goals as praiseworthy, stated that the proceeding was not likely to achieve these objectives. We stated, "Instead, it is likely to intensify efforts by others to revise international rulemaking principles in a way that would impose major increases in the cost on users of international data transmission services. As long as the Commission's action is perceived by other administrations as unilateral and contrary to CCITT recommendations, it could result in a deterioration of this country's relations with foreign administrations."

We expressed concern that this unilateral Commission activity could result in the actions by foreign administrations to eliminate or reduce flat rate private line service. We urged the Commission to redesignate the proceeding to a Notice of Inquiry, "the purpose of which is to determine a unified U.S. negotiating position." We urged the Commission to develop, in conjunction with other interested Government entities and the private sector, "an effective strategy for pursuing that position in recognized international forums and through direct bi-lateral negotiations." The Commission has not acted further in this proceeding since issuing its NPRM.

The deregulation of shared use and resale as proposed in S. 2469 would presumably result in similar foreign reactions. In fact when Senator Goldwater introduced the Bill on May 3, 1982, he said, "It is clear that foreign telecommunications entities probably prefer the status quo to changes that are contained in this bill." [1]

CBEMA has consistently taken a position supportive of FCC and legislative policies encouraging deregulation and competition. However, in this docket we argued that the concerns of international comity, as well as existing international CCITT recommendations, argue against unilateral FCC activities deregulating these services. Preseumably, CBEMA for the same reasons would have the same reaction to unilateral legislative policies deregulating these services.

A final complication is that the timing of the bill's being introduced and out for comments and possible action by the Senate coincides with U.S. preparations for the upcoming Plenipotentiary Conference of the International Telecommunications Union (ITU), the major policymaking conference of that body held every 5-8 years, and scheduled for September 28 to November 5, 1982.

2. *Reciprocity*

Section 624 entitled, "Equitable Market Access" grants the FCC broad authority to "conduct inquiries and establish policies, rules, regulations, and requirements applicable to the entry of foreign carriers or foreign persons supplying telecommunications or information services or facilities" in the U.S. telecommunications markets in order to ensure fair and equitable treatment of U.S. telecommunications entities seeking access to foreign markets. The grant of authority allows the FCC to establish comparable terms and conditions for entry of such foreign entities as U.S. entities are permitted entry into (1) foreign nations in which such telecommunications or information services are based, and (2) "the foreign nation under the laws of which such telecommunications or information services are established."

The section directs the Commission prior to exercising these powers to consult and coordinate with the International Task Force on Telecommunications and Information, (established under Title II of the Bill—see number 3), "to assess the probable impact of any proposed exercise of such powers upon United States commercial and Government interests, foreign policy, and international comity."

CBEMA has taken the position opposing any retaliation with respect to the utilization of a reciprocity amendment. The Association has gone on the record in this regard concerning a similar type reciprocity section that appeared in an early version of H.R. 5158, the "Telecommunications Act of 1982," and was subsequently removed, according to Congressman Tim Wirth (Chairman of the House Subcommittee on Telecommunications, Consumer Protection, and Finance), because of testimony by representatives of various Executive Branch agencies; i.e.; State, Commerce, and U.S. Special Trade Representative (USTR) that such a provision would violate existing treaties such as the GATT. CBEMA's position that expanded, freely determined fair trade and investment will benefit all parties in the long term, including U.S. firms and their employees would presumably carry over to the reciprocity provisions of S. 2469.

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[1] Congressional Record—Senate May 3, 1982, pg. S4434.

3. *Proposed Government structure to develop U.S. international telecommunications policy*

Title II of S. 2469 (Sections 201–207) entitled, the "International Telecommunications and Information Coordination Act of 1982" establishes a seven member interagency International Telecommunications and Information Task Force to coordinate U.S. International Telecommunications and Information Policies. This task force will be composed of the Secretaries of Commerce, State, Defense, the Attorney General, the USTR, the Chairman of the FCC, the Deputy Assistant Secretary of State for Transportation and Telecommunications Affairs, and the Director of the International Communications Agency.

CBEMA President Vico Henriques provided a statement on April 2, 1981 before the Subcommittee on Government Information and Individual Rights on H.R. 1957 the "International Communications Reorganization Act of 1981." This bill would have established a committee on International Communications and Information with similar coordination functions as those set forth in S. 2469, and composed of the Secretaries of Commerce, State, Defense, Labor, the Chairman of the FCC, the USTR, and the Director of the Office of Management and Budget.

In his statement Mr. Henriques, while supporting the need for central coordination of U.S. International Communications and Information Policies, suggested modification of the composition of this committee. We suggested centralizing the issue focus within an advisor to the President on Internation Communications and Information. Our statement indicated there was no need for an additional public sector advisory committee, which both H.R. 1957 and S. 2469 establish, because the advisory committees now in existence advising the USTR and Department of State are "properly focused at the issue level."

It would seem that the CBEMA position re H.R. 1957 requesting modification of the structure of the Committee established by that bill, by creating a special advisor to the President for these matters, with an objective of centralizing the issue focus, would apply to S. 2469 as well.

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